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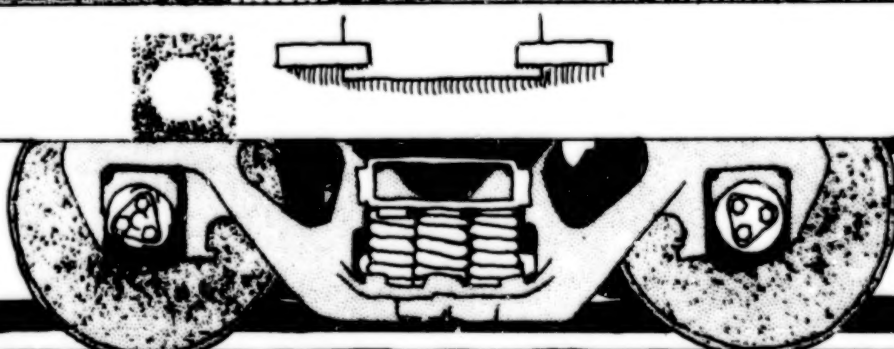
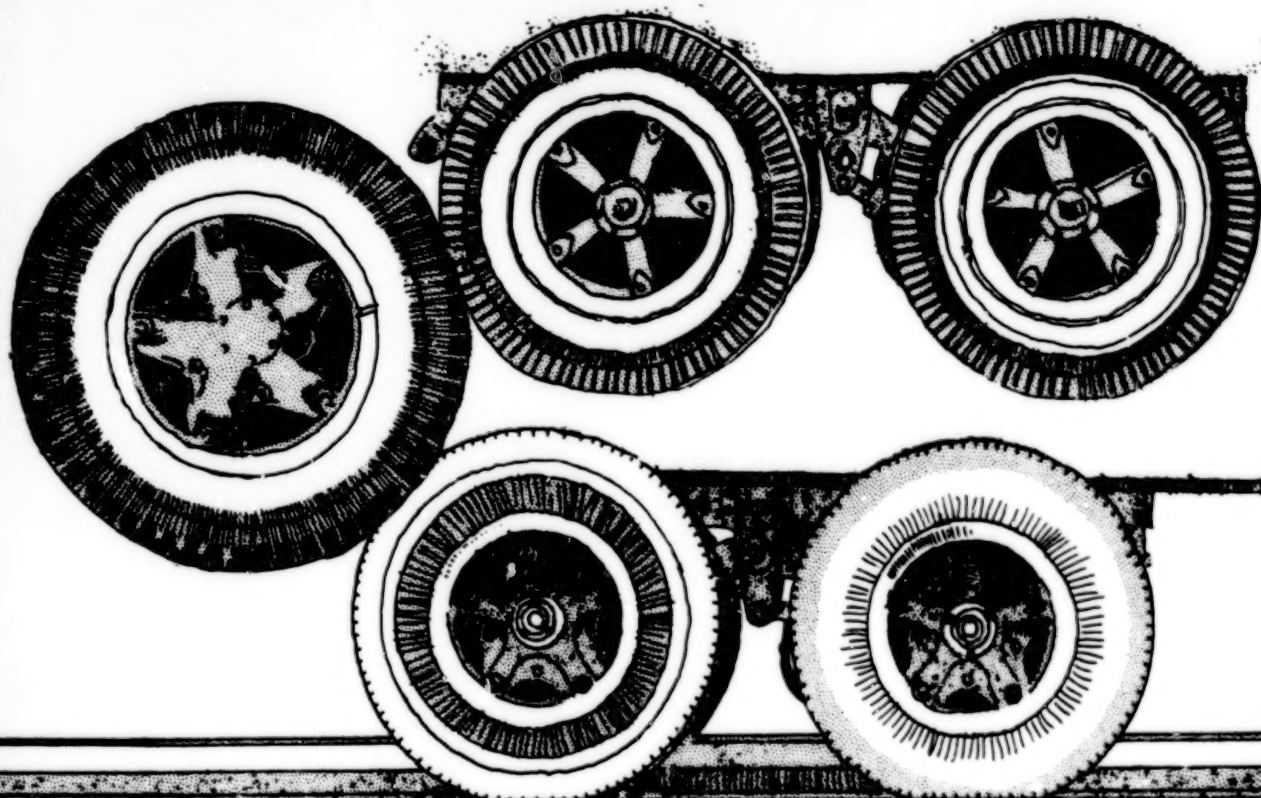
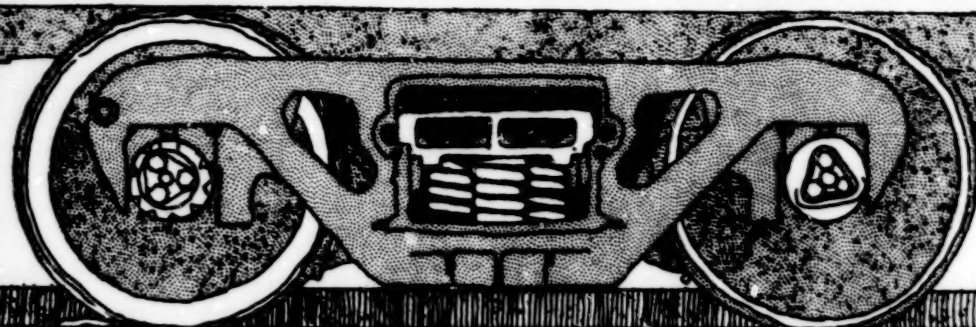
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# ICC81

Interstate Commerce Commission  
1981 Annual Report

COMPLETED  
ORIGINAL



# ICC81

Ninety-fifth  
Annual Report  
of the  
Interstate  
Commerce  
Commission

Fiscal Year Ending  
September 30,  
1981





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## LETTER OF TRANSMITTAL

### To the Congress of the United States

It is my pleasure to submit the 95th annual report of the Interstate Commerce Commission, in accordance with Section 21 of the Interstate Commerce Act. This report reflects the activities and accomplishments of the Commission for the fiscal year ending September 30, 1981.

The past fiscal year was one of the most active in the Commission's history as we devoted our full resources to implementing three landmark pieces of legislation—the Motor Carrier Act of 1980, the Household Goods Transportation Act of 1980, and the Staggers Rail Act of 1980. Each of these measures substantially relaxed economic regulation of a segment of our Nation's interstate surface transportation network.

With respect to the Motor Carrier Act of 1980, our proceedings centered on eased entry and more flexible ratemaking. Among the most significant actions taken by the ICC were regulations designed to make it easier and faster to obtain ICC operating authority and to infuse additional competition into motor carrier ratemaking through amendment of rate bureau agreements.

Enactment of legislation on October 15, 1980 to ease regulation and increase competition among household goods moving companies signaled an historic departure from the traditional scheme of Federal regulation of the moving industry. This important new statute offers consumers a greater variety of prices and services. The Commission implemented provisions of the new law, which includes sections designed to encourage rate and service options and reduce paperwork burdens on the moving industry while still protecting consumers.

Washington, D.C., April 5, 1982

There was an equal amount of Commission activity in the rail area as the Commission moved to initiate or complete action on more than 20 Congressionally-mandated rulemaking proceedings under the Staggers Rail Act. Specific actions included the adoption of a new policy for large railroad mergers, exemption from economic regulation of trailer-on-flatcar and container-on-flatcar service provided by railroads, and the formulation of new standards for determining whether railroads are earning adequate revenue.

Despite all the foregoing activity, our task is far from complete. While the three landmark legislative actions taken in 1980 opened a new window on the way America views its transportation systems, much still needs to be accomplished.

Thus, the Commission proposed legislation to reform economic regulation of the intercity bus industry. This legislation would simplify entry, ease exit from unprofitable routes, limit antitrust immunity for pricing, and give bus companies greater flexibility to price their services without regulatory review.

In order to further reduce burdensome regulation of our country's surface transportation industries, a task force was established in the summer of 1981 to examine all ICC regulations to determine their appropriateness in today's regulatory environment and their benefits relative to their costs. Through utilization of a cost/benefit standard, the Commission has examined more than 150 regulations, 76 of which have been targeted for modification or elimination. We believe the savings to our regulated carriers, in terms of time, paperwork, and money, will be considerable.

Policy initiatives now underway or planned for this fiscal year include a legislative proposal to eliminate the "evidence of public need" standard from entry requirements for trucking companies, a legislative proposal to simplify existing emergency and temporary motor carrier authority procedures, a streamlining of the Commission's long-held policy concerning traffic protective conditions in railroad consolidation proceedings, actions to assist small independent truckers in their dealings with large carriers, and a possible redefinition of the traditional common carrier obligation as it concerns motor carriers.

During fiscal year 1981, the Commission has made major strides in reducing Federal regulation of the Nation's motor carriers and railroads. As we continue this process, consistent with the intent of Congress, we will continue to discharge our remaining responsibilities in a manner that is fair to shippers, carriers, and consumers.

A statement of appropriations and aggregate expenditures for fiscal year 1981 appears in Appendix D.

On behalf of the Commission, I respectfully submit to the Congress the 95th annual report of the Interstate Commerce Commission.

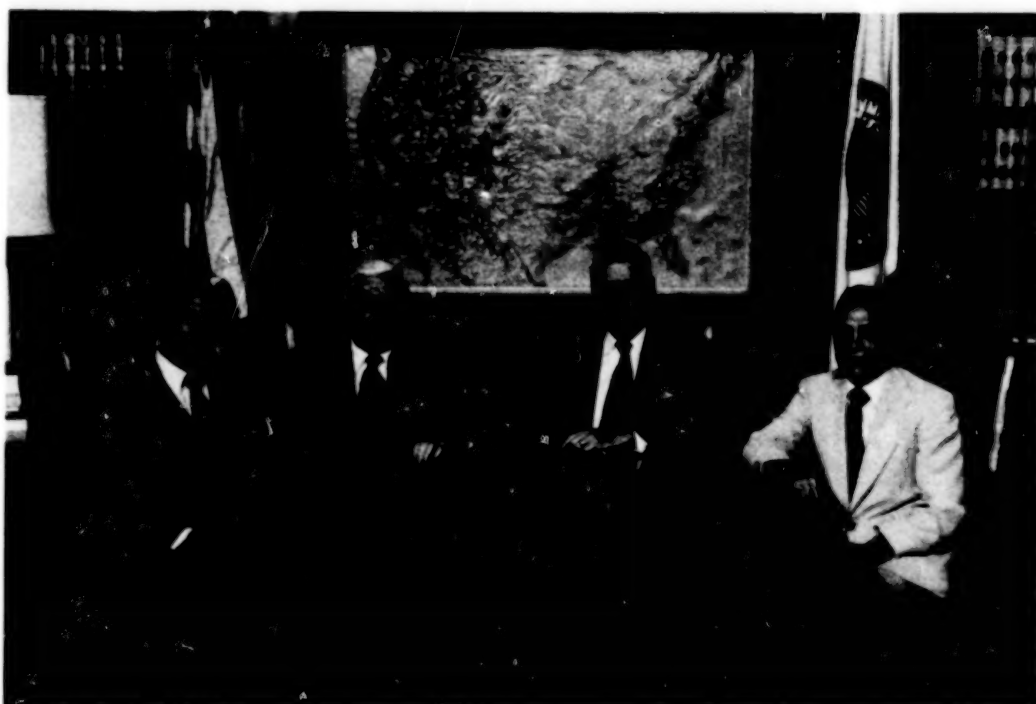
Reese H. Taylor, Jr.  
*Chairman*

## THE COMMISSION

(as of September 30, 1981)

	Appointed	<i>Tenn Expires</i> Dec. 31
Reese H. Taylor, Jr., <i>Chairman</i> (R) <i>Nevada</i> . . . . .	1981	1983
Charles L. Clapp, <i>Vice Chairman</i> (R) <i>Massachusetts</i> . . . . .	1974	1980
Robert C. Gresham (R) <i>Maryland</i> . . . . .	1969	1981
Reginald E. Gilliam, Jr. (D) <i>Virginia</i> . . . . .	1980	1982

Darius W. Gaskins, Jr. resigned as a member and chairman of the Commission effective February 1, 1981. Marcus Alexis, who had been serving as vice chairman, became acting chairman. Reese H. Taylor, Jr. was nominated by President Reagan on May 5 to become the ICC's next chairman. The U.S. Senate confirmed Mr. Taylor on June 16 and he was officially sworn in as a member and chairman of the ICC on June 25. Commissioner Alexis resigned from the Commission effective June 30. Commissioner Thomas A. Trantum resigned from the Commission effective July 31. Commissioner Charles L. Clapp was elected vice chairman in August, succeeding former Commissioner Alexis.



**Interstate Commerce Commissioners, left to right, Gilliam, Clapp (Vice Chairman), Taylor (Chairman) and Gresham.**

## Functions and Responsibility

The Interstate Commerce Commission is an independent Federal agency responsible for regulating interstate surface transportation within the United States. The ICC is concerned with assurance that the American public has adequate and efficient transportation.

This concern for the individual consumer has existed since 1887 when the Commission became the first independent regulatory agency with specific authority in this field. In more recent years, the ICC has been in the forefront of regulatory agencies in establishing a consumer information facility and installing a toll-free hotline for consumers.

The ICC now holds jurisdiction over some 20,000 for-hire companies providing surface transportation in the United States. These companies include railroads, trucking companies, bus lines, water carriers, coal slurry pipelines, freight forwarders, and transportation brokers.

The ICC is directed by 11 commissioners, appointed by the President and confirmed by the Senate for seven-year terms. The President designates one of the commissioners to serve as chairman and the commissioners elect the vice chairman on an annual basis. During the fiscal year, the Commission was constituted with seven members.

## How the ICC Operates

The commissioners supervise all activities, with specific responsibilities delegated to 13 offices and bureaus. Regular agenda meetings are held to act on Commission matters.

The chairman coordinates and organizes the Commission's work and represents it in legislative matters and in relations with other government agencies. The chairman is the executive head of the Commission and has general responsibility for:

1. Overall management and functioning of the Commission.
2. Formulation of plans and policies designed to assure the effectiveness of the Commission and the administration of the Interstate Commerce Act.
3. Identification and early resolution of major regulatory problems.
4. Development and utilization of effective staff support to carry out the duties and functions of the Commission.

The vice chairman represents the Commission or acts in place of the chairman when the chairman is not available. Additionally, the vice chairman has been delegated important functions by the Commission, including oversight of matters involving the admission, disbarment or discipline of practitioners.

The Commission's daily activities during the fiscal year were carried out through an organizational structure consisting of 13 offices and bureaus, as follows:

- Office of the Managing Director—directs day-to-day administration of the Commission and the management and functioning of the Commission's operations.
- Office of the General Counsel—defends Commission decisions challenged in court, renders legal opinions to the Commission, and assists in developing the Commission's legislative program.
- Office of the Special Counsel—created by the Commission to represent the public in all proceedings before the ICC.



- **Office of the Secretary**—the issuance and documentations center of the Interstate Commerce Commission. The Secretary is the custodian of the Commission's seal and records and is responsible for issuance of ICC decisions.
- **Office of Hearings**—staff of administrative law judges responsible for conducting Commission hearings.
- **Office of Proceedings**—processes formal cases pertaining to operating rights, financial matters, rates and competitive practices.
- **Office of Transportation Analysis**—provides economic advice when needed or requested by any other ICC bureau of office. Performs transportation research and conducts economic and statistical analyses relating to regulation and to specific proceedings before the agency.
- **Office of Compliance and Consumer Assistance**—maintains close liaison with the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to insure that these industries operate in compliance with ICC policies. Provides assistance to the public who are having problems with companies regulated by the Commission.
- **Office of Communications**—provides general assistance to meet public and press requests, maintains news room for press assistance, and conducts briefings for visitors and foreign guests.
- **Office of Governmental Affairs**—assists Members of Congress on matters pertaining to the Interstate Commerce Commission and coordinates activities of the agency with the States.
- **Small Business Assistance Office**—functions as a clearinghouse or focal point for resolution of small business problems in the area of surface transportation and provides the Commission with a broad perspective of small business problems.
- **Bureau of Accounts**—concerned with the accounting phases of effective economic regulations, prescribing uniform accounting rules, auditing books of transportation companies, and reviewing financial reports.
- **Bureau of Traffic**—is concerned with publication, filing and interpretation of tariffs, and their suspension before they become effective if they appear unreasonable or unlawful.

## YEAR IN REVIEW

### 1980

- October 7 . . . . . ICC establishes program to assist owner-operator/ "Lumping" victims.
- October 8 . . . . . Commission law judge approves plans by Chicago & North Western Railroad to build rail line to haul coal from Wyoming Powder River Basin.
- October 15 . . . . . ICC unveils implementation plan for Staggers Rail Act of 1980; promises quick action.  
ICC finds Union Pacific-Missouri Pacific merger application complete.  
ICC issues proposed rules to implement new household goods legislation.
- October 23 . . . . . Commission proposes rules to implement rail contract provisions of the Staggers Rail Act of 1980.
- October 27 . . . . . ICC releases staff responses to questions regarding implementation of the Motor Carrier Act of 1980.
- October 29 . . . . . ICC proposes flexible rail car-hire charges.
- November 18 . . . . . ICC proposes nationwide coal rate guidelines.
- November 20 . . . . . ICC sets formula for determining opportunity costs in rail abandonment cases.
- November 21 . . . . . ICC proposes replacing rail rate increases with regulation-free cost recovery zone.  
ICC proposes that rail and truck service provided by rail carriers in connection with trailer-on-flatcar and container-on-flatcar service be exempted from regulation.
- November 25 . . . . . ICC adopts interim rules on rail abandonments.
- November 26 . . . . . ICC proposes to relax requirements for cancellation of motor carrier joint rates and through routes.  
ICC adopts modified interim rules for operating rights applications.  
ICC proposes standards for railroad revenue adequacy.
- December 8 . . . . . ICC entertains first request by truck firm under Motor Carrier Act of 1980 to serve abandoned rail route.
- December 9 . . . . . ICC releases staff report on developments in the trucking industry since passage of the Motor Carrier Act of 1980.
- December 11 . . . . . ICC holds oral argument on rail rate bureaus.
- December 16 . . . . . ICC approves five percent freight rate increase to enable Nation's railroads to offset inflationary cost increases.

- December 18 . . . . . ICC releases report on prospects of Milwaukee Road.
- December 19 . . . . . ICC implements rate bureau provisions of the Motor Carrier Act of 1980.
- December 20 . . . . . ICC establishes expedited procedures for acting on finance-related exemptions from rail regulation under provision of the Staggers Rail Act of 1980.
- December 22 . . . . . ICC proposes legislation to reform economic regulation of the intercity bus industry.  
ICC enlarges Ombudsman's Office to accommodate more effectively public inquiries about the Motor Carrier Act of 1980.
- December 24 . . . . . ICC issues final rules to lift ban on compensated intercorporate hauling; also proposes to end ban on leasing trucks and drivers to private carriers.  
ICC issues rules to eliminate gateways and remove route limitations for trucking companies.  
ICC issues final rules for restriction removal in trucking applications.  
ICC simplifies procedures to license truckers.
- December 30 . . . . . ICC reports to Congress on impact of railroad rate and service contracts.

## 1981

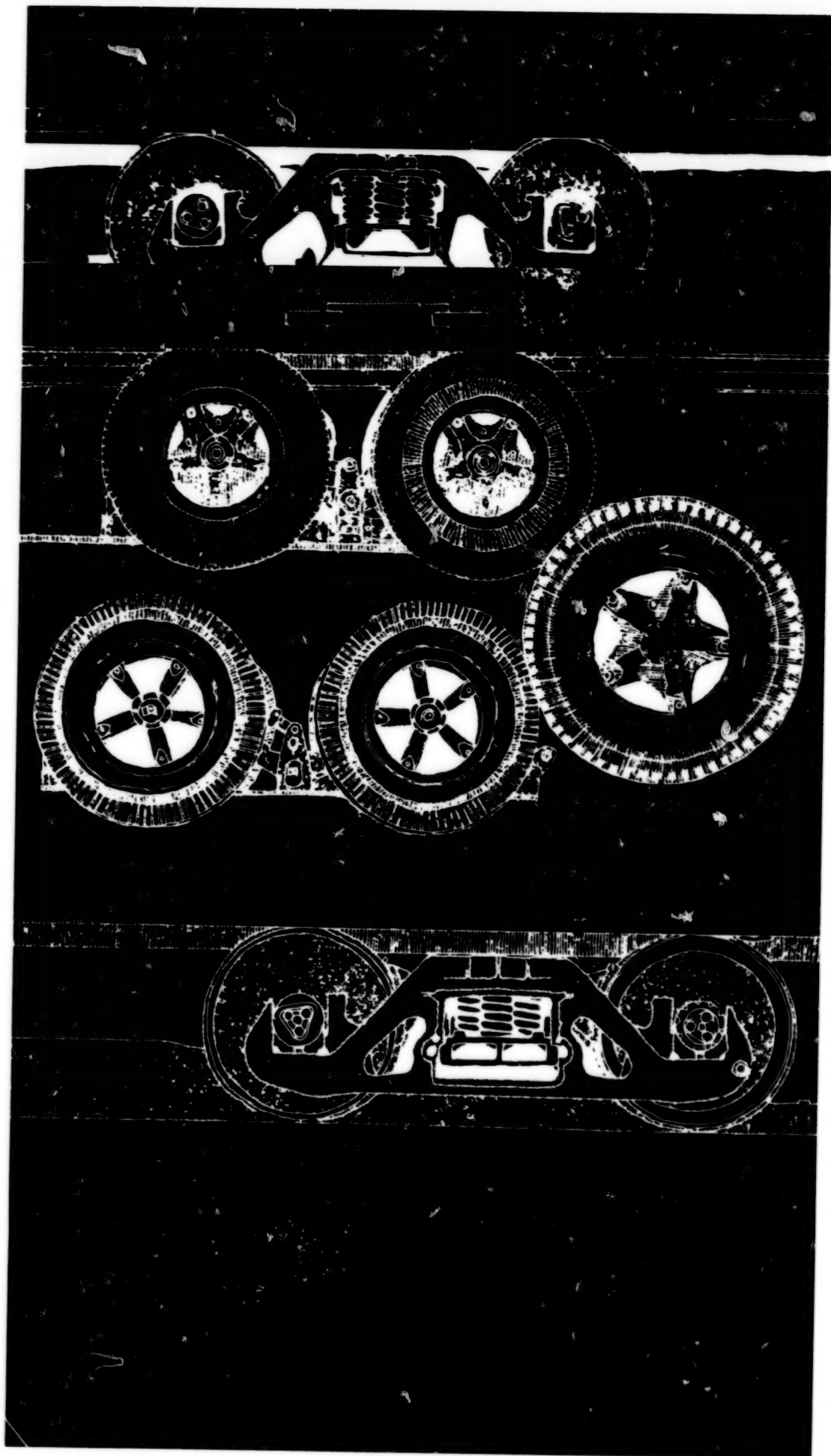
- January 2 . . . . . ICC accepts for consideration application of NWS Enterprises, Inc. to control Norfolk & Western Railway and Southern Railway.
- January 6 . . . . . ICC adopts rules to ensure more efficient and expeditious handling of motor carrier acquisition cases.
- January 15 . . . . . Report on motor carrier fuel surcharge program sent to Congress.
- January 21 . . . . . ICC implements rate bureau provisions of the Staggers Rail Act of 1980.
- January 22 . . . . . ICC proposes to redefine service obligation of motor carriers by allowing them to offer less service than they are authorized to provide.
- January 26 . . . . . Commission proposes rules for providing cost data for surcharges and joint rate cancellations.
- February 2 . . . . . ICC adopts new policy for big rail mergers.
- February 5-April 6 . . . . . ICC holds hearings on increasing minority participation in trucking.

- February 19 . . . . . ICC lifts economic regulation of trailer-on-flatcar and container-on-flatcar service provided by railroads.
- February 20 . . . . . ICC issues standards for emergency and temporary motor carrier authority applications.
- February 26 . . . . . ICC hosts workshop with state rail regulatory officials on implementation of the Staggers Rail Act of 1980.
- February 27 . . . . . ICC proposes to allow private carriers to trip lease their equipment and drivers to trucking companies.
- March 11 . . . . . ICC issues rules for household goods moving and proposes key performance standards.  
ICC proposes abolishing motor carrier uniform detention rules.
- March 23 . . . . . ICC proposes revised procedures for providing cost data for surcharges and joint rate cancellations.
- March 30 . . . . . ICC sets new standards for determining whether railroads are earning adequate revenues; repeals existing rules.
- March 31 . . . . . ICC allows owner-operators to obtain authority to haul food and certain other products through a fitness only application.
- April 1 . . . . . ICC proposes cost standards that establish jurisdictional threshold for rail ratemaking purposes.
- April 9 . . . . . ICC adopts new appellate procedures.
- April 10 . . . . . ICC issues policy statement on motor carrier pooling applications.
- April 17 . . . . . ICC adopts regulation-free cost recovery zone to replace existing rules for rail industry-wide freight rate increases.
- April 22 . . . . . 40 states certified to retain rail intrastate rate jurisdiction under Section 214 of the Staggers Rail Act.
- April 28 . . . . . ICC promulgates a methodology to compute the amount of subsidy necessary to subsidize continuation of rail service.  
ICC rescinds rule requiring prior Commission approval for railroads to reroute freight during emergencies.
- May 4 . . . . . ICC tells Congress that Conrail cannot survive without permanent Federal aid.
- May 12 . . . . . ICC issues new interpretation of minimum rate provisions of the Interstate Commerce Act in light of enactment of the Staggers Rail Act.  
ICC proposes to modify duplicate operating rights policy for motor carriers.

- May 18. . . . . ICC rejects use of product competition in determining reasonableness of rail freight rates.
- June 10 . . . . . ICC testifies at Congressional oversight hearings on the Motor Carrier Act of 1980.  
ICC releases introduction to uniform rail costing system.
- June 11 . . . . . Regulated carriers allowed to establish affiliated agents to perform exempt consolidation services.
- June 22 . . . . . ICC proposes loosening regulation of international truck traffic.  
ICC authorizes purchase of Illinois Terminal Railroad by Norfolk & Western Railway.
- June 26 . . . . . Commission adopts rules implementing the feeder railroad development program established under the Staggers Rail Act.
- July 8. . . . . ICC revises rules to limit agency review of rail freight rates.
- July 8-August 22 . . . . . ICC, Department of Transportation and Small Business Administration hold management conferences around the country for independent truck owner operators.
- July 9. . . . . ICC issues rules that provide for sale of lightly used rail branch lines prior to abandonment.
- July 22. . . . . In first case of its kind, ICC sets purchase price and terms of sale for uneconomical rail branch line.
- July 24. . . . . ICC affirms law judge ruling to give Chicago and North Western Railroad access to Wyoming's Powder River Basin coal fields.
- July 31. . . . . Commission proposes phase-out of fuel surcharge program for motor carriers.
- August 7 . . . . . ICC releases report on minority participation in trucking.
- August 28 . . . . . ICC proposes streamlining of rules for building, acquiring or operating rail lines.
- September 1. . . . . ICC proposes leasing rules changes to benefit owner-operators.
- September 10. . . . . ICC issues final rules governing abandonment of rail freight lines.

- September 15. . . . . ICC recommends to a Federal Reorganization Court that the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad be permitted to discontinue service over 690 miles of track.
- September 17. . . . . ICC proposes major reduction in reporting burdens for Nation's railroads, truck and bus lines.  
ICC releases analysis that finds that only three major U.S. railroads earned adequate revenues in 1980.
- September 22. . . . . Commission holds oral argument on the motor carrier fuel surcharge program.
- September 28-29. . . . . ICC holds first of four seminars on uniform rail costing system.





## LEGISLATION

During fiscal year 1981, the Congress continued to focus on regulatory reform of the transportation industry. The Commission responded by actively participating in committee hearings, preparing legislative proposals for Congressional consideration, and submitting written comments on legislation affecting economic regulation of surface transportation.

Since Congress adopted major legislation in the motor carrier, household goods and railroad areas during the preceding year, oversight of the Commission's implementation of these statutes was a primary concern in FY 1981. Consequently, the Commission appeared at hearings in both the House and Senate regarding implementation of the Motor Carrier Act of 1980, and was preparing for scheduled oversight hearings on the Household Goods Transportation Act of 1980 and the Staggers Rail Act of 1980 as the fiscal year ended.

The Commission was also active in the preparations and deliberations surrounding new legislative initiatives. When Congress began to consider the difficult problem of future funding for Conrail, the Commission testified at hearings on this subject and made a significant contribution to development of the Northeast Rail Service Act of 1981 by providing data and analysis of Conrail's cost structure. In December 1980, the Commission sent to Congress a legislative proposal to reform the economic regulation of the intercity bus industry. This draft bill was accompanied by a study of the industry and an analysis of the American Bus Association's proposal.

In addition to testifying at Congressional hearings on these measures, the Commission provided assistance to Congress as it debated the issues involved and refined the language of the bill.

Generic regulatory reform was a major topic of concern in Congress during FY 1981, and the Commission contributed frequently to the debate on this issue. The Commission testified or provided written comments on the two leading comprehensive bills to reform the regulatory process. In addition, the Commission was asked to comment on proposals which focused on single issues in this area, such as the legislative veto or limitations of Federal recordkeeping requirements.

The enactment of so many major transportation bills during fiscal years 1980 and 1981 ensures that the Commission will be the focus of intensive oversight scrutiny in the next few years. In addition, new legislation—particularly in the intercity bus and intermodal transportation areas—appeared to be a distinct possibility as the fiscal year ended. Clearly, the Commission will continue to play an active part in the legislative arena in an effort to ensure that competing interests are balanced and that the public interest is served.

A detailed description of the Commission's legislative experience is given in the following sections.

### Legislative Recommendations

*Bus Regulatory Reform*—On December 15, 1980, the Commission submitted a legislative proposal dealing with regulatory reform of the intercity bus industry. This included an analysis of legislation proposed by the American Bus Association, a proposal drafted by the Commission, and a report of the purpose and need for new legislation. The

Commission's proposed legislation generally adopted provisions of the Motor Carrier Act for application with minor modification to the bus industry, along with some additional provisions specific to certain unique characteristics of the bus industry. Briefly, the Commission's proposed legislation would:

- simplify entry into new routes by new or existing carriers;
- establish a more certain procedure for exit from unprofitable routes;
- retain the common carrier obligation to provide the service held out to the public;
- give intercity bus companies greater flexibility to price their services with minimal government regulation or interference;
- eliminate route restrictions;
- limit antitrust immunity to discussions between individual carriers with non-competitive end-to-end connecting routes to develop joint rates and through routes; and
- change the administrative procedures affecting the bus industry to conform with those applicable to motor carriers of property.

The Commission's draft legislation, entitled the "Motor Bus Act of 1981," was introduced in both the House and Senate (H. R. 3663 and S. 926). The House Committee on Public Works and Transportation held a hearing on the proposals on May 28, 1981. At the close of the fiscal year, no further action had taken place, although both the House and Senate anticipated enactment of bus industry reform legislation early in FY 1982.

**Sex Discrimination**—On April 20, 1981, the Commission transmitted to Congress proposed legislation to eliminate gender-specific terms (such as newsboy and linemen) from the Interstate Commerce Act. This bill was drafted in response to a Presidential memorandum requesting agencies to conduct a comprehensive review of their laws, regulations, policies and programs in order to eliminate sex discrimination in and by the Federal government. The Commission's review of the Interstate Commerce Act and Commission regulations was carried out in coordination with the Justice Department's Task Force on Sex Discrimination.

The Commission's draft bill was introduced by Representative John Dingell, Chairman of the House Committee on Energy and Commerce, on August 4, 1981. No further action had occurred on this legislation at the close of fiscal year 1981.

## Railroads

The Commission testified twice regarding the future of Conrail on March 24, 1981 before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation and on April 2, 1981 before the Commerce, Transportation, and Tourism Subcommittee of the House Committee on Energy and Commerce.

Although the Commission shares with Congress the goal of finding a way to make Conrail a financially healthy railroad that can survive without a continuing infusion of Federal funds, there are serious obstacles blocking realization of that goal. The preliminary results of the Commission's study of Conrail's cost structure identified two particular areas of concern.

First, major structural anomalies exist, including an abnormally large amount of duplicate track, that leads to costly and inefficient use of expensive assets. Second, labor costs represent a far greater share of the Conrail revenue dollar than is true of other railroads.

The Commission outlined three ways in which labor costs could be reduced: (1) by reducing train and engine crew size; (2) by substituting an hourly wage base for the time/mileage wage base; and (3) by eliminating some or all "arbitraries" (i.e., payments in addition to base salary made to crew members for specific occurrences, such as delayed departures).

The labor issue is only one part of the Conrail scenario and the Commission, in its testimony, listed other factors to be considered.

The problems of Conrail were addressed by Congress in the Northeast Rail Service Act of 1981, which was enacted as part of the Omnibus Budget Reconciliation Act on August 13, 1981 (P.L. 97-35).

## Buses

On May 28, 1981, the Commission testified before the Surface Transportation Subcommittee of the House Public Works and Transportation Committee regarding legislation to reform economic regulation of the intercity bus industry. The Commission commented in support of its proposal—H.R. 3663, the Motor Bus Act of 1981. The Commission discussed the provisions of H.R. 3663, stating that it offered a balanced approach to regulatory reform. Its testimony focused on three issues at the crux of motor bus reform—eased entry, eased exit, and institution of flexible pricing in conjunction with the elimination of most antitrust immunity. In the area of entry, the Com-

mission also supported a zone of rate freedom for motor carriers of passengers and urged the elimination of antitrust immunity for setting single-line rates. For joint rates, the Commission stated that antitrust immunity should apply only to the making of a specific joint rate among carriers with end-to-end noncompetitive routes. Regarding exit provisions, the Commission emphasized that there are potential problems that could result from divergent Federal and state policies and that these must be dealt with. It recommended that interstate carriers be allowed to exit from unprofitable routes, provided they give passengers and communities adequate notice.

At the end of FY 1981, neither the Senate nor the House had passed bus legislation. However, prospects were good that legislation would be enacted early in FY 1982.

## Trucking Companies

*Motor Carrier Oversight*—The Motor Carrier Act of 1980 requires Congress to conduct annual oversight hearings for five years on implementation of the Act. During the first round of these, the Commission testified before the House Public Works and Transportation Committee on June 10, 1981, and before the Senate Commerce, Science, and Transportation Committee on June 18, 1981. Along with a formal statement, the Commission submitted a listing and explanation of the status of proceedings initiated by the Commission to implement the Act, a summary of rulemakings under judicial review, and several reports that formed the basis for the Commission's monitoring of the effects of the Act.



The Commission expressed the belief that eased entry, rate flexibility and reduced antitrust immunity have resulted in a more competitive environment for the trucking industry. The Commission described its efforts to promote competitive transportation services. It reported that there has been a significant increase in the number of new entrants and in the number of carriers applying for broadened authority. According to the report on the initial phase of the Commission's small community service study, there has been little change in service to small communities.

The Commission concluded its testimony by providing a section-by-section analysis of the effects of the Motor Carrier Act of 1980. After the hearing, the Commission received an extensive list of supplemental questions from the House Public Works and Transportation Committee. Subsequently, comprehensive responses were prepared and submitted to the committee.

*Motor Carrier Insurance*—On July 9, 1981, the Commission testified before the Senate Commerce, Science, and Transportation Committee regarding implementation of Sections 29 and 30 of the Motor Carrier Act of 1980. These sections deal with minimum levels of financial responsibility for motor carriers.

The Commission described efforts to coordinate its implementation of these provisions with the development of regulations in this area by the Department of Transportation. The Commission modified its insurance rules<sup>1</sup> to require the same minimum amounts of insurance for

bodily injury and property damage as prescribed by the Secretary of Transportation. The testimony also described three significant problems which arose after the final rules were issued. One problem related to provisions for coverage for "environmental restoration liability" contained in DOT's regulations. It was also necessary to ensure that the insurance industry and the Commission would be able to determine which carriers transport hazardous substances and the types of substances they carry, since higher insurance coverage is required under those circumstances. The Commission told the committee that modifications to the rules were being drafted to address these concerns. Subsequently, new proposed rules were issued on July 14, 1981.

*Independent Owner-Operators*—On September 30, 1981, the Subcommittee on Export Opportunities and Small Business Problems of the House Small Business Committee held a hearing on the interagency owner-operator training conference pilot program. The Commission testified, along with the other agencies that participated in the program. The Commission's testimony began with a brief description of recent efforts by the ICC to identify and help alleviate owner-operators' problems. The Commission's reports on various difficulties facing owner-operators, including confusing and conflicting state requirements, skimming, and lumping, have led to legislative changes in the Motor Carrier Act and rulemaking proceedings by the Commission. The Commission also described the efforts of the ICC's Small Business Assistance Office in this area.

<sup>1</sup> Ex Parte No. MC-5 (Sub-No. 1) *Motor Carriers of Property Minimum Amounts of Bodily Injury and Property Damage Liability Insurance*.

The Commissions's evaluation of the owner-operator segment of the trucking industry revealed that many independent truckers do not have a clear understanding of ICC regulations. Therefore, the Commission's presentation at the owner-operator conferences focused on the areas of ICC responsibility, the application process for operating authority, and leasing regulations. The Commission stated its belief that the conferences were very successful in assisting owner-operators in understanding the role the government plays in their industry.

### **Regulatory Reform**

On April 7, 1981, the Commission's General Counsel testified before the Administrative Law and Governmental Relations Subcommittee of the House Judiciary Committee regarding H.R. 746, the Regulatory Procedure Act of 1981. The Commission's statement endorsed the goals of the bill—to make regulations more cost effective and to improve the regulatory process in order to reduce the burden of regulation on the public—and outlined the Commission's procedures and policies designed to further these goals.

However, the Commission expressed reservations regarding some of the means proposed in H.R. 746 to achieve reform goals, such as formalized procedures for regulatory analysis. Regulatory analysis is an integral, rather than a separate, part of the Commission's rule-making process, and the formalized procedures of H.R. 746 could increase the ICC's recordkeeping activities and could require a significant expenditure of administrative resources. The Commission expressed its opposition to the provision to eliminate the presumption in favor of agency action in judicial review proceedings. Since questions of law, fact,

and policy are often intertwined in an agency's decision, the Commission feared that the provision could be construed to allow the court to substitute its own policy judgement and factual determinations for those of the agency, thus increasing the cost, complexity and time required for judicial review. At the end of FY 1981, the Subcommittee was in the process of marking up H.R. 746 in preparation for consideration by the full House Judiciary Committee.

At the request of the Senate Committee on Governmental Affairs, the Commission provided written comments on S. 1080, the Regulatory Reform Act, in a letter dated July 10, 1980. Although some of the specific provisions of S. 1080 differed from those of H.R. 746, they dealt with the issue of regulatory reform in the same general, comprehensive manner. Therefore, the Commission's comments paralleled those of the Commission's prior testimony before the House Judiciary Committee.

Subsequently, the Senate Governmental Affairs Committee requested additional comments from the Commission on the provisions for executive branch oversight of regulatory activity contained in S. 1080. The Commission responded in a letter dated September 4, 1981.

The executive oversight provision would, among other things, give the President or his designee "the authority to monitor, review, and ensure agency implementation" of the regulatory procedures of S. 1080. The Commission stated that although it was not concerned about strictly procedural oversight, there was a possibility that the provision in S. 1080 could be construed to allow the President to exercise a considerable degree of substantive control over the regulatory process.



The Commission was particularly concerned about the possibility that agencies might be required to clear proposed or final rules with the Executive Branch prior to publication. Such a requirement could have a significant chilling effect on the development of proposed rules. Moreover, the Commission found the potential for *ex parte* contacts with members of the executive branch during pre-publication review of a proposed rule particularly troubling.

As an alternative, the Commission suggested that agencies submit a copy of proposed and final rules to the President or his designee at the same time they are submitted to the Federal Register for publication. Any comments from the Executive Branch could then be considered, along with those of other interested parties, as final rules are developed.

The Commission's comments were noted during committee markup of S. 1080. The Governmental Affairs Committee voted to report S. 1080 on September 16, 1981, with an amendment to ensure that comments by the Office of Management and Budget on rules proposed by the independent agencies would be advisory only. The Senate Judiciary Committee had reported a different version of S. 1080 on July 17, 1981. At the end of FY 1981, the two committees were in the process of negotiating a compromise bill for consideration by the full Senate.

**Recordkeeping Requirements**—On April 22, 1981, the Commission submitted written comments on H.R. 316, the Limitation on Government Recordkeeping Requirements and Actions Act of 1981, to the House Committee on Government Operations. H.R. 316 would provide that no Federal agency may re-

quire a person to maintain records for more than four years, unless they relate to hazardous wastes or nuclear material. The bill also would prohibit an agency from acting to enforce a law or regulation or collect a penalty after four years from the date of the alleged violations.

The Commission stated that, in the majority of cases, it requires that records be kept for periods less than the four-year maximum. It agreed that steps need to be taken to ensure that businesses are not unduly burdened by recordkeeping requirements. However, it expressed the belief that a blanket time limitation on all recordkeeping requirements is not necessarily the best approach.

For example, it is important that records containing summarized financial and accounting information be retained for longer periods of time in order to provide the historical data which enables the Commission to analyze the performance of the industries it regulates. In addition there are a number of statutes governing the Commission's activities which contain longer time frames for enforcement actions than the four-year limitation of H.R. 316.

The Commission suggested that a better approach might be for Congress to identify all existing provisions of law that are contrary to H.R. 316 and evaluate the need for them. This should result in reduced recordkeeping requirements, while providing for adequate retention of records which are genuinely needed for longer periods in order to protect the public interest.

No action had taken place on this legislation by the end of the fiscal year.

**Legislative Veto**—The Commission addressed the issue of legislative veto in a letter to the Senate Committee on Governmental Affairs on June 1, 1981. In this letter, the Commission provided

comments on S. 344, the Agency Accountability Act of 1981. S. 344 provides for a joint resolution of disapproval of agency rules. Such a joint resolution would have to be passed by both houses of Congress and signed by the President before it could become law.

The Commission said it is continuing to strive to improve its own rulemaking process and welcomes specific guidance from Congress as to how these reforms can best be achieved. However, the Commission did not feel that the legislative veto process was the most appropriate method of providing oversight. One problem with the legislative veto is that it would lengthen the regulatory process. Since many of the Commission's rules are adopted pursuant to statutory directives with specific deadlines, this is an important consideration.

Another difficulty noted was the effect that a veto of one rule would have when that rule constitutes only one of numerous rules implementing an overall statutory directive. It would be difficult for an agency to carry out the overall statutory mandate successfully if vetoes of some rules took place while others were left intact. The Commission also pointed out that S. 344 did not specify procedures by which Congress could handle the competing interests involved in reviews of individual rules. This could be a significant problem, considering the importance and controversial nature of many of the rules proposed and adopted by Federal agencies.

Moreover, the Commission stated its belief that the problems associated with the legislative veto could be avoided while accomplishing its objectives by adopting a policy of reviewing regulatory statutes on a regular basis. Such periodic reviews would ensure that an agency was adhering to the intent of Congress.

At the same time, Congress would have an opportunity to make amendments to the agency's enabling statute where appropriate. The Commission concluded its comments by noting that the joint resolution of disapproval approach is probably the best version of a legislative veto if Congress decided to enact such legislation.

The issue of legislative veto was still under active consideration at the close of the fiscal year. A provision similar to S. 344 was contained in H. R. 746, the Regulatory Procedure Act of 1981. The Senate continues to consider the issue separately, although it is likely to be the subject of a floor amendment to S. 1080, the Regulatory Reform Act, when that bill is considered by the full Senate.

*Sunset*—On August 18, 1981, the Commission submitted written comments on P.R. 2, the Sunset Act of 1981, and H.R. 58, the Sunset Review Act of 1981, to the House Rules Committee. The Commission began its statement by expressing apprehension regarding sunset proposals which terminate a program automatically unless extended by affirmative Congressional action. The Commission prefers a Congressional oversight process in which Congress would conduct periodic reviews of an agency's activities and enact changes in the agencies mandate or responsibilities which are consistent with its findings. The Commission cited its participation in Congressional oversight hearings on implementation of the Motor Carrier Act of 1980 as an example of this kind of review.

Because H.R. 2 contained a provision requiring termination of an agency or a program unless specifically reauthorized at the completion of sunset review, the

Commission expressed a preference for H.R. 58. This bill would increase Congressional oversight authority and activity, but would not end the program's budget authority if the program failed to be approved by an arbitrary deadline. Moreover, H.R. 58 would grant Congressional committees some flexibility in deciding which of the programs under their jurisdictions need to be reviewed, rather than placing all Federal programs on mandatory reauthorization schedules. The Commission closed its statement by expressing its belief that thorough internal review of agency programs is the most effective means of ensuring that they accomplish their intended goals.

### **Other Issues**

*Consultant Reform*—In a letter dated August 18, 1981, the Commission supplied comments to the Senate Committee on Governmental Affairs on S. 719, the Consultant Reform and Disclosure Act of 1981. S. 719 is designed to deter abuses in consultant employment practices in the Federal government by disclosing the extent of the Federal use of consultants. In general, the Commission endorsed the objectives of the legislation, stating that the provisions of S. 719 represent significant steps toward realizing the goal of improving the process of pro-

curing consulting and other services to aid in performing governmental functions.

However, the Commission discussed several concerns. Most of these revolved around the Commission's experience in using studies or reports prepared by consultants in connection with a formal proceeding. The Commission agreed that when an agency issues a study substantially derived from a report prepared by a contractor, the study should include specific information regarding the contract. However, it did not feel that this type of information should be printed as part of the decisions of the Commission which are based on formal proceedings. In this situation, some other method of disclosure would be more appropriate.

The Commission also expressed concern about a requirement that an agency prepare a written evaluation of contract performance within 120 days after completion of a consulting contract. This deadline could require the Commission to evaluate such a report which was prepared in connection with a formal evidentiary proceeding before a decision was reached in the proceeding. The Commission suggested that 120 days after completion of the evidentiary record would be a better deadline for evaluating these reports.

*Coal Slurry Pipelines*—On September 23, 1981, the Commission submitted comments on H.R. 4230, the Coal Pipe-

line Act of 1981, to the House Committee on Public Works and Transportation. It noted that the issue of coal pipelines involves a complex set of issues—including land management, environmental concerns, and water rights—which Congress must consider in deciding whether the Federal government should provide certain economic interests with the substantial right of eminent domain. In commenting on the transportation issues involved, the Commission favored the approach of H.R. 4230, which granted the Commission the authority to certify coal pipelines, since the Commission has the experience and expertise required to make such determinations. It also stated that, although coal pipelines pose a significant competitive challenge to the railroads, Commission regulations of both modes should allow them to compete fairly and effectively. The Commission expressed its interest in determining that the most efficient mode of transportation is used, given particular and differing circumstances.

*Federal Coal Leases*—The Senate Committee on Energy and Natural Resources requested the Commission to comment on S. 1542, legislation to repeal the prohibition against the purchase of federal coal leases by common carrier railroads. It was concerned that railroads would be able to use their market power in the transportation of coal in an effort to drive up the delivered cost of coal or to discriminate against other coal shippers in favor of their own coal transportation needs.

Since passage of the Staggers Rail Act of 1980 altered the Commission's regulation of the railroad industry significantly, it was important to address the manner in which these changes would affect the Commission's ability to prevent these abuses. It stated that it still has considerable authority in the area of maximum rates and that enforcement of the common carrier obligation should be adequate to prevent abuses in the car service area. The Commission's authority to prevent discrimination was weakened considerably by the Staggers Rail Act, particularly in the area of contract rates. It is possible that a rail carrier could negotiate a contract rate with its mining subsidiary which is significantly lower than the rates charged to other coal shippers. However, the railroads also have substantial incentives to negotiate equitable contract rates with all their coal customers. The Commission expressed confidence that its regulation, along with enforcement of the antitrust laws, would be adequate to ensure that railroads do not abuse their market power in the transportation sector in order to manipulate the market for coal.



## ADMINISTRATION

### Organization and Management

Administrative management efforts focused on adapting Commission resources to implement the motor and rail regulatory reform legislation enacted during fiscal year 1981. Organizations and functions were examined and adjusted to ensure compatibility with a reduced regulatory role. Personnel shifts and procedural reforms were necessary to process the influx of new motor carrier licensing applications and to reduce the backlog of cases.

The Legislative Counsel's function was incorporated into the Chairman's Office to improve liaison with Congress. In addition, reorganization plans were developed for the Bureau of Accounts, the Office of Transportation Analysis, and the Office of Compliance and Consumer Assistance.

After the enactment of the Motor Carrier Act of 1980, routine compliance audits of motor carriers were no longer considered necessary. The rail ratemaking provisions of the Staggers Rail Act of 1980, however, increased the importance of accurate cost data from the railroads. As a result, motor carrier audits were significantly reduced and the audit program was redesigned to emphasize audit of the 41 Class I railroads. Thus, the need for field audit staff has decreased. In accordance with the new emphasis on railroads, a reorganization of the regional structure was proposed, which is intended to place staff in closer proximity to railroad workload.

Restructuring of the Office of Transportation Analysis, which formerly was known as the Office of Policy and Analysis, was proposed as a result of a change in the role for that office. Because much

of the policy development work associated with implementing the motor and rail legislation is nearly completed, the focus of the office will shift to analyzing the impact of legislative or policy changes and providing analysis for casework. The staff size will decrease, but substantial research and monitoring activities will continue.

Plans also were being formulated for a reorganization of the Office of Compliance and Consumer Assistance, formerly called the Office of Consumer Protection. A major purpose of this reorganization is to strengthen the Commission's enforcement program and establish priorities consonant with the National Transportation Policy as enunciated in motor, rail and household goods legislation enacted during 1980. The expanded enforcement program will be mounted by increasing the number of positions in field offices and by modifying or eliminating lower priority activities within the office. The new organization will provide a strong and visible enforcement program which is the best means to promote voluntary compliance with laws and regulations. This expanded effort will be accomplished within current Commission resources.

The increased numbers of tariff submissions prompted a management study to determine whether private maintenance of the tariff filing system was still cost effective. The results of this study indicated that certain economies could be realized by moving the public tariff file in-house. This move was completed during FY 1981 (also see chapter on Tariffs).

The Commission implemented recommendations of its Data Reduction Task Force by decreasing the reporting burden of carriers and eliminating reports not used on a regular basis. Data reduction efforts will continue in FY 1982.

Personnel and budgetary management were improved in several areas. A full-time equivalent reporting system was designed and tested for implementation on October 1, 1981. This system will permit Commission managers to monitor employment levels throughout the year and thus encourage staffing decisions based on up-to-the-minute information. The Commission's merit pay system was implemented to provide a means of rewarding exceptional performance by employees.

The Commission experienced a moderate level of attrition throughout the year. This factor, coupled with an effort to assist employees in finding jobs, created a number of vacancies which were not filled. Consistent with Administration objectives, the Commission's employment level continued to drop significantly.

### **Automation of Records**

Actions to automate recordkeeping during the fiscal year resulted in improvements of service to the public. Applications in motor carrier operating authority cases now are accepted on a "walk-in" basis, docketed, microfilmed and made available to the public within three days of filing. Docket numbers are automatically assigned by a computer system which works off an automated data base of authorized carriers.

The Commission's carrier data base (Chaindex System) was remodeled during the year. The system now provides the latest three years of a carrier's revenue reported to the Commission and displays all applications filed by that carrier during the last six years. This system permits the Commission to handle public inquiries promptly. The system for serving parties to proceedings (Process Serving System) also was automated during the year. This

system now simultaneously produce service lists and mailing labels for Commission use, and service lists for parties who must cross-serve pleadings.

### **Commission Budget**

The Commission's fiscal year 1981 budget was developed and submitted concurrently to the Office of Management and Budget and Congress in September 1981. The thrust of the budget revolves around the continued implementation of recently enacted reform legislation and the refinement of Commission policies and procedures.

### **Salaries and Expense Appropriation**

On March 4, 1981, Acting Chairman Marcus Alexis and other Commission members and staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the ICC's fiscal year 1982 budget request. Testimony was provided to the Subcommittee on Transportation of the Senate Committee on Appropriations on March 10, 1981.

### **Payments for Directed Rail Service Appropriation**

In late September 1979, the Commission ordered the Kansas City Terminal Railway Co. to provide service over the lines of the Chicago, Rock Island and Pacific Railroad. Total payments during FY 1981 associated with Rock Island directed service were approximately \$8.1 million.



## ENERGY AND ENVIRONMENT

### Energy

During fiscal year 1981, the Commission instituted several rulemaking proceedings designed to make surface transportation more energy-efficient. In response to directives contained in the Motor Carrier Act of 1980, the ICC adopted final rules in two separate proceedings which will improve the operating efficiency of motor carriers of property by eliminating restrictions on existing certificates and permits which are wasteful of fuel.<sup>1</sup> These rules establish expedited procedures for processing applications which seek to remove or modify restrictions in order to: (1) broaden reasonably the categories of property authorized by the carrier's certificate or permit; (2) authorize service to intermediate points on a carrier's route; (3) provide round-trip authority where only one-way authority exists; (4) broaden unduly narrow territorial descriptions of the areas a carrier may serve; and (5) eliminate existing requirements that a carrier observe certain gateways or otherwise route its traffic in circuitous fashion.

The Commission also acted to exempt from regulation rail-provided truck service when part of a continuous rail/truck intermodal movement and proposed to expand the exemption to include independent and rail-affiliated motor car-

riers.<sup>2</sup> It is expected that this exemption will encourage the use of trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) transportation and thereby reduce energy consumption, improve public safety and prolong pavement life on the Nation's highways.

In another energy-related rulemaking proceeding, the ICC proposed to phase out its revenue-based fuel surcharge for motor carriers, freight forwarders and United Parcel Service<sup>3</sup> (See section on Rates in chapter on Trucking Companies for a detailed discussion.)

### Environment

The focus of the Commission's environmental activities began to shift over the course of the past year. As a result of a national energy policy and market forces which favor the development of coal reserves, there has been a steady increase in the number of applications to the ICC for authority to construct railroad branchlines which will move coal (1) from mines in the west to existing rail networks and (2) from existing lines to newly-constructed coal burning power plants. At the same time, the Commission has issued final rules which revise the agency's procedures for complying with the National Environmental Policy Act (NEPA).<sup>4</sup> These new rules provide that detailed environmental impact statements (EIS's) normally will be prepared only for rail line construction applications

<sup>1</sup> *Removal of Restrictions, Motor Car. of Property*, 132 M.C.C. 374 (1981). *Elimination of Gateway Restrictions*, 132 M.C.C. 359 (1981).

<sup>2</sup> *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 391 (1981). *Ex Parte No. 230 (Sub-No. 6), Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and other Motor Carriers)* (not printed), decided February 19, 1981.

<sup>3</sup> *Ex Parte No. 311 (Sub-No. 4), Modification of the Motor Carrier Fuel Surcharge Program* (not printed), decided October 5, 1981.

<sup>4</sup> *Revision of Natl. Envi. Policy Act Guidelines*, 363 I.C.C. 653 (1980).

and that other classes of action (e.g. mergers, rail abandonments, etc.) will generally be subjected to a less rigorous form of environmental analysis, unless circumstances warrant more in-depth treatment.

The purpose behind these rule changes is to deemphasize study of proposals which experience has shown are not usually environmentally significant and to concentrate staff time instead on analysis of proposals, which pose the greatest threat to the human environment and, by extension, the public interest.

The trend toward increased coal development and revisions in the Commission's NEPA rules have prompted the ICC's environmental unit to direct more of its time and resources to analysis of rail construction applications. During fiscal year 1981, the Commission completed a major EIS addressing the impacts of construction of a highly controversial rail line which is to serve a coal-fired electric generating station in Niagara County, N.Y.<sup>5</sup> The ICC also neared completion of a lengthy supplemental EIS in the Niagara County proceeding and made significant progress on a major EIS being developed in connection with a proposed 82 mile coal line in eastern Montana.<sup>6</sup> During the year, the Commission cooperated with the Department of Interior's Office of Surface Mining in the preparation of two studies which analyze the environmental impacts of transportation systems designed to serve new coal mines in New

Mexico and Wyoming.<sup>7</sup> At present the ICC is involved either as lead or cooperating agency in the preparation of environmental studies for five additional western coal lines<sup>8</sup> and anticipates work will be initiated on approximately six new rail line construction EIS's in the near future.

Despite the fact that most of its efforts in the environmental area have been devoted to rail construction projects, during the past year the Commission also completed complex environmental assessments of the impacts posed by two major rail consolidation proposals involving class I railroads<sup>9</sup> and a supplemental analysis of the effects of abandonment of a car ferry service operating across Lake Michigan.<sup>10</sup> The rest of the Commission's environmental workload consisted of studies of the impacts of various rail abandonments, commuter fare increases and rulemaking proposals.

<sup>7</sup> Environmental Assessment for La Ventana Mine, Sandoval County, New Mexico. EIS for Proposed Mining and Reclamation Plan, Antelope Mine, Converse County, Wyoming.

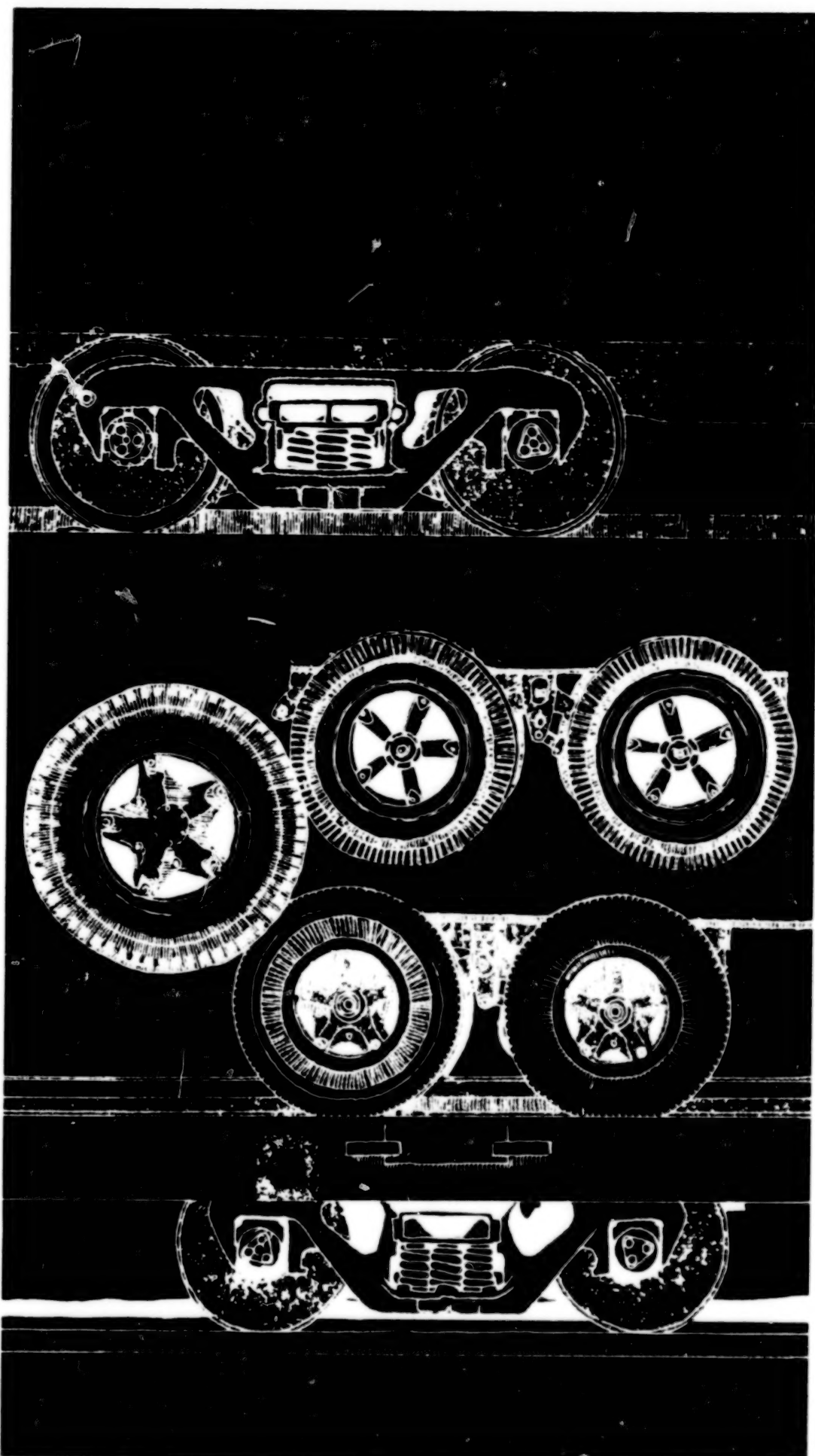
<sup>8</sup> Finance Docket No. 28272 et al, *Star Lake Railroad Company—Construction and Operation in McKinley County, New Mexico*; *Castle Valley Railroad Line Construction*, Carbon and Emery Counties, Utah; *North Antelope Railroad Line Construction*, Campbell County, Wyoming; *Creston Railroad Line Construction*, Lincoln County, Washington; *Riley Ridge Railroad Line Construction*, Sublette County, Wyoming.

<sup>9</sup> Finance Docket No. 29430 et al, *NWS Enterprises, Inc.—Control—Norfolk and Western Railway Company and Southern Railway Company*. Finance Docket No. 30,000 et al, *Union Pacific Corp. and Union Pacific Railroad Co.—Control—Missouri Pacific Corp. and Missouri Pacific Railroad Co.*

<sup>10</sup> No. AB-18 (Sub-No. 36F), *Chesapeake and Ohio Railway Company—Abandonment—in Mason County, MI and Mainitowoc, WI* (not printed), decided October 9, 1981.

<sup>5</sup> Finance Docket No. 29254, *Somerset Railroad Corporation—Construction and Operation—of a Line of Railroad in Niagara County, NY.*

<sup>6</sup> *Tongue River Railroad Line Construction*, Custer, Rosebud, and Powder River Counties, Montana.



# RAILROADS

## General Financial Condition

While rail traffic in fiscal 1981 was expected to surpass moderately the record 914 billion ton miles of 1979, the fiscal year was likely to be the third in a row in which the ton mile figure remained constant. More important, however, was the effect high interest rates and the recession had on the traffic mix. For example, the volume of high rated and profitable automobile traffic in fiscal 1981 was down from even the depressed levels of 1980, which was about 25 percent below 1979 figures. Lumber and wood products traffic in 1981 was far below the depressed levels of 1980. If it had not been for overall increases in coal traffic, 1980 and 1981 volume would have been far below the 1979 levels.

Despite the unimpressive traffic figures, when all the financial results for the year have been tabulated, Class I net railway operating income in 1981 probably will match or surpass the record levels of World War II. An important factor in the railroads' improved performance is higher rates. In spite of this advance, the railroad industry's rate of return for the year likely will be less than five percent on investment—near the lowest of major American industries.

The Staggers Rail Act of 1980, which was enacted October 14, 1980, had been in effect only for a year. Therefore, the availability of Class I railroad financial statistics was too limited to make any far-reaching judgments as to the Act's contribution to rail earnings. Nevertheless, the ICC believes the Act has helped the railroads to eliminate regulatory lag in adjusting rates for inflation.

From October 1, 1980 to June 30, 1981, Class I net railway operating income rose 38 percent to \$1.2 billion from \$878 million during the same nine month period in 1979-1980. If Conrail is

excluded, the advance would be 25 percent to one billion dollars from \$800 million. Since railroad traffic was ahead less than one-half of one percent (705 billion revenue ton miles vs. 702 billion), three possibilities exist for the large increase in operating income: (1) rates rising faster than costs; (2) improved traffic mix; or (3) a combination of the two.

With respect to expenditures, the ICC has no evidence that the railroads deferred maintenance in order to report higher earnings. Maintenance expenses are the main area where the railroads can "manage" their income accounts. Maintenance levels, in real terms, have risen in recent years; and so far there appears to be no evidence of a sharp cutback, although results vary from railroad to railroad. Should the business slowdown continue into FY 82, the ICC would expect to see maintenance levels decline.

## Reorganizations

The Commission retains jurisdiction under Section 77 of the Bankruptcy Act over five railroads in reorganization: The Boston and Maine Corporation; the Chicago, Rock Island and Pacific Railroad Company; the New York, Susquehanna and Western Railroad Company; the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and the Morristown and Erie Railroad Company. During the fiscal year, 27 petitions were filed by the trustees and counsel requesting the Commission to set maximum limits of compensation as required by the Bankruptcy Act.

The Chicago, Rock Island and Pacific Railroad Company was ordered by a court into liquidation. It is not operating any rail service but several of its lines



have been leased or sold to others. (For additional information regarding sales, see the portion of this chapter on *Construction, Acquisition and Operation*).

An amended plan of reorganization was filed by the trustees of the Boston & Maine Corporation.<sup>1</sup> It provides for the sale of all of the outstanding stock to Guilford Transportation Industries, Inc. for cash. Guilford presently controls Maine Central Railroad Company.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) filed an amended plan of reorganization with its reorganization court. A final plan was to be filed with the Commission early in calendar year 1982. The Commission authorized the Milwaukee to make tender offers to certain of its bondholders; the trustee proposed to use \$122.2 million from the offer to retire outstanding bonds.<sup>2</sup> The Commission advised the reorganization court, which has final jurisdiction, to authorize abandonment of 519.3 miles of mainline between Ortonville, MI and Miles City, MT, and to discontinue trackage rights between Miles City and Billings, MT.<sup>3</sup> Although the line has been operated profitably, it needs substantial rehabilitation that Milwaukee is unable to fund. Therefore, the Commission recommended that the line be sold to a financially responsible person to continue the service.

The Commission approved the reorganization of the New York, Susquehanna and Western Railroad Company into the New York, Susquehanna and Western Railway Corporation, a subsidiary of Delaware Otsego Corporation.<sup>4</sup> This assures the continued operation of the Susquehanna's lines.

## Mergers and Consolidations

The Staggers Rail Act of 1980 made three significant changes in the law governing rail consolidations. First, although the traditional "public interest" test for major rail consolidation proceedings (involving two or more class I railroads) was retained, the Act added a new specific factor to be used in the Commission's analysis: the effect of a transaction on competition. This statutory change codified the Commission's treatment of competition in rail consolidation cases decided since the 1940's. Second, Congress eliminated the general "public interest" test for all other (minor) rail consolidations and substituted a competitive analysis similar to that required under the general antitrust law. Third, Congress substantially shortened the time period within which the Commission must decide minor rail consolidations. In November 1980, the Commission published interim rules implementing these changes.<sup>5</sup>

During fiscal 1981, the Commission decided several major consolidation cases. In June, it approved a series of transactions liquidating the Illinois Ter-

<sup>1</sup> Finance Docket No. 26115 (Sub No. 12), *Boston & Maine Corporation—Revised Plan of Reorganization*.

<sup>2</sup> Finance Docket No. 28640 (Sub No. 6), *Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Reorganization (Tender Offer)* (not printed), decided April 27, 1981.

<sup>3</sup> No. AB-7 (Sub No. 97), *Richard B. Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Abandonment—Ortonville, Minn., to Miles City, Mt.—and Discontinuance—Miles City, Mt., to Billings, Mt.* (not printed), decided September 11, 1981.

<sup>4</sup> *New York, S & W. R. Co.—Plan of Liquidation*, 363 I.C.C. 794 (1980).

<sup>5</sup> Ex Parte No. 282 (Sub No. 8), *Railroad Consolidation Procedures—Time Revisions* (not printed), decided October 29, 1980.



minal Railroad Company and transferring its principal assets to Norfolk and Western Railway Company.<sup>6</sup> This proceeding provided the Commission with its first opportunity to construe the new "competitive impact" test added by the Staggers Act for rail consolidations other than those involving two or more Class I railroads. The Commission determined that it was required to approve any such transaction unless it would result in a substantial lessening of competition, creation of a monopoly or restraint of trade in surface freight transportation. Only if significant anticompetitive effects are found will the Commission review the traditional public interest factors to determine whether the anticompetitive effects of the transaction needs. In the same decision, the Commission stated that it will not impose conditions in a minor rail consolidation proceedings unless those conditions bear on issues which the Commission is authorized to consider in determining whether or not to approve a transaction.

The commission concluded in June 1981 that it lacked jurisdiction to block the formation of a holding company by Burlington Northern, Inc. (BN).<sup>7</sup> Under the Interstate Commerce Act, the Commission has jurisdiction over an "acquisition of control—by a person that is not a carrier" only if control is sought over "at least 2 carriers." Although BN controls a number of railroads, the Commission found that all carrier operations were conducted as part of a single integrated system. In deciding that it lacked jurisdic-

tion over the transaction, the Commission reaffirmed the vitality of the single system doctrine. Under that doctrine, first enunciated over 25 years ago, the Commission does not have jurisdiction over a noncarrier's acquisition of control of separate but commonly controlled carriers if they are operated as a single integrated rail system.

In December 1980, the Atchison, Topeka and Santa Fe Railway Company, which owned a half interest in the Toledo, Peoria and Western Railroad Company (TP&W), was authorized to acquire the remaining half interest from a former subsidiary of the Pen Central Transportation Company.<sup>8</sup>

In October 1980, the Commission denied a petition of the New York Department of Transportation (NYDOT) that would have required the Delaware and Hudson Railroad Corporation (D&H) to be merged into the Norfolk and Western Railway Company.<sup>9</sup> D&H and NYDOT participated actively in the NW-Southern consolidation proceeding, discussed later in this section, until October 21, 1981, when D&H and NYDOT withdrew after entering into a final agreement for the sale of NW's stock interest in D&H to Guilford Transportation, Inc. The Commission will review that sale in a future proceeding.

Two other extremely significant rail control applications were filed during the fiscal year. In late calendar 1980, the Commission received an application from the Union Pacific Railroad Com-

<sup>6</sup> *Norfolk & Western Railway Company—Pur.—Illinois Terminal Railroad Company*, 363 I.C.C. 881 (1981).

<sup>7</sup> Finance Docket No. 28583 (Sub No. 1), *Burlington Northern Inc.—Control and Merger—St. Louis—San Francisco Railway Company* (not printed), decided June 5, 1981.

<sup>8</sup> *Atchison, T&S.R. Ry. Co.—Control*, 363 I.C.C. 715 (1980).

<sup>9</sup> *Norfolk & W.Ry. Co. and New York, C. & St. L.R. Co. Merger*, 363 I.C.C. 269 (1980).

pany (UP) to control Missouri Pacific Railroad Company and Western Pacific Railroad Company.<sup>10</sup> Hearings on the proposal were held in San Francisco, CA, Dallas, TX, and Denver, CO as well as in Washington, D.C. The consolidation, if approved and consummated, would create the second longest railroad in the West. The consolidated system would serve every major market in the United States west of the Mississippi River, and therefore this proposal is considered among the most significant ever entertained by the Commission.

The Commission also conducted hearings on a proposal by Norfolk and Western Railway Company (NW) and Southern Railway Company (Southern) to be acquired by NWS Enterprises, Inc., a holding company formed by the two railroads.<sup>11</sup> This proposed consolidation would create a rail system approximately 18,000 miles long blanketing the eastern United States. The hearing record was closed on October 30, 1981, over a year in advance of the statutory deadline.

## Rates

The Staggers Rail Act of 1980 required several proceedings in the area of joint rates. In order to help individual railroads receive adequate compensation for their services, Section 217 permits

railroads to impose surcharges or cancel joint rates under certain conditions. Under the new provisions, carriers are guaranteed rates that recover a specified revenue/variable cost ratio. The Commission was directed to establish procedures to provide potential protestants basic cost information necessary for analysis of proposed surcharges or cancellations. The Commission developed relatively simple costing procedures based on Rail Form A to be used by shippers and carriers in these proceedings.<sup>12</sup> Since "reasonably expected costs" are used in the determination of certain surcharges, the Commission proposed a definition of that term to include all costs necessary to sustain service on the line segment. This includes cost of capital, normalized maintenance and the replacement cost of equipment.<sup>13</sup> To permit the flexibility in surcharges and joint rate cancellations guaranteed under Section 217, the Commission vacated its prescription of class rates as maximum reasonable rates.<sup>14</sup> This was necessary because the earlier prescription prevented total charges on movements from exceeding certain levels potentially in conflict with the Staggers Act provisions. Finally, the Commission proposed changes in its procedures for adjudication of divisions of revenue disputes to reflect new Staggers Act provisions and to eliminate burdensome and unnecessary requirements.<sup>15</sup>

<sup>10</sup> Finance Docket No. 30,000, *Union Pacific Corporation and Union Pacific Railroad Company—Control—Missouri Pacific Corporation and Missouri Pacific Railroad Company*.

<sup>11</sup> Finance Docket No. 29430 (Sub No. 10), *NWS Enterprises Inc.—Control—Norfolk and Western Railway Company and Southern Railway Company*.

<sup>12</sup> Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation* (not printed), decided March 19, 1981.

<sup>13</sup> Ex Parte No. 402, *Reasonably Expected Costs* (not printed), decided January 21, 1981.

<sup>14</sup> No. 37403, *Consolidated Rail Corp.—Eliminate Dk. 28300, 364 I.C.C. 615* (1981).

<sup>15</sup> Ex Parte No. 322 (Sub No. 1), *Revised Procedures for Divisions of Revenue Cases* (not printed), decided October 7, 1981.

Although Section 217 emphasizes the adequacy of carrier revenues, it also provides certain safeguards for shippers and connecting carriers. The Commission instituted investigations where necessary to protect the rights of shippers and carriers.<sup>16</sup>

Implementation of the Staggers Rail Act also required proceedings in the areas of rates for recyclable commodities, minimum rates, contracts, rate bureaus and market dominance.

In order to encourage recycling, Section 204 of the Staggers Rail Act defines a revenue-to-variable cost ratio to be used as a ceiling on rail rates for recyclables. The Commission calculated that ratio to be 146 percent and ordered the carriers to reduce rates for recyclables to that level.<sup>17</sup>

The purpose of the minimum rate provisions, as amended by the Staggers Rail Act, is to accord rail carriers maximum flexibility to lower rates in order to meet competition or otherwise attract traffic. The Commission modified its cost criteria for minimum rates in order to allow this maximum rate flexibility.<sup>18</sup>

A rulemaking was instituted to implement Section 208, which permits rail carriers and purchasers of rail service to enter into contracts for rail service.<sup>19</sup> The

section directs the Commission to establish special tariff rules to assure that the essential elements of the contract are available to the general public in tariff form. Contracts were filed by virtually all Class I railroads and by a significant number of Class II railroads and switching carriers. The contracts cover every major commodity group and represent innovative and mutually beneficial rail service arrangements. Contracts are being filed with the ICC at the rate of about 100 a month. There were 500 contracts on file at the commission as of September 30, 1981.

A major decision analyzed rate bureau agreements in light of the Staggers Rail Act and denied approval of the agreements between and among rail common carriers of the Western Railroad Traffic Association, the Southern Freight Association, the President's Traffic Conference, and the Traffic Executive Association—Eastern Railroads.<sup>20</sup> The applicants were directed to file new agreements which comply with the national rail transportation policy as amended by the Staggers Rail Act. The Commission emphasized the importance of price and service competition and independent action by individual carriers.

<sup>16</sup> No. 38689, *Restructured Rates on Grain and Grain Products*, *ConRail* (not printed), decision to investigate decided August 12, 1981; No. 38676, *Changes in Routing Provisions—ConRail—July 1981* (not printed), decision to investigate decided July 24, 1981; No. 38679, *Restructured Rates on Recyclables, O/T Iron or Steel Scrap*, *ConRail* (not printed), decision to investigate decided July 31, 1981.

<sup>17</sup> Ex Parte No. 394, *Cost Ratio for Recyclables—1980 Determination*, 364 I.C.C. 425 (1980), 365 I.C.C. 304 (1981).

<sup>18</sup> Ex Parte No. 355, *Cost Standards for Railroad Rates*, 364 I.C.C. 898 (1981).

<sup>19</sup> Ex Parte No. 387, *Railroad Transportation Contracts* (not printed), notice decided October 23, 1980.

<sup>20</sup> Section 5b Application No. 2, *Western Railroads—Agreement*, 364 I.C.C. 635, 782, 787 (1981), 365 I.C.C. 5 (1981).

Under the provisions of the Railroad Revitalization and Regulatory Reform Act of 1976, a finding of market dominance is necessary before a rail rate may be found unreasonably high. The Staggers Rail Act added a provision that market dominance may not be found if the revenue-to-variable cost ratio is less than specified percentages. The Commission modified its governing tests for market dominance in order to conform to the new ratio test and also to broaden the types of evidence that may be considered in addition to this threshold ratio determination.<sup>21</sup> A proceeding also was instituted proposing a method for calculating the cost recovery percentage, one of the percentages specified as a threshold test for market dominance.<sup>22</sup> The latest cost recovery percentage was set at 197.5 percent.

Besides rulemaking proceedings, the Staggers Rail Act resulted in many complaint proceedings. Section 229 of the Act barred complaints concerning existing rates from being filed after March 30, 1981. Approximately 800 complaints were filed, and consideration of them began during the fiscal year.

The Commission approved a nationwide rate increase in what was the last of the traditional general rate increase proceedings.<sup>23</sup> A cost recovery index to allow quick recovery of all inflation-

related cost increases was developed in accordance with Section 203 of the Staggers Rail Act and will be the basis for future collective rate increases.<sup>24</sup> It may also be used independently by carriers to recover inflation-related cost increases.

Because the Staggers Rail Act allows greater rate freedom for carriers lacking adequate revenues, the Commission's revenue adequacy determinations have taken on increased importance. The Commission determined that a railroad is earning adequate revenues if it has a rate of return equal to the cost of capital. Based on 1979 data, only three of the Nation's Class I railroads were found to be earning adequate revenues.<sup>25</sup> Three carriers also were found revenue adequate using 1980 data.<sup>26</sup> The Commission instituted a proceeding to determine the railroads' current cost of capital.<sup>27</sup>

The standard of reasonableness for coal rates continues to be an important issue. The Commission proposed new guidelines for these movements.<sup>28</sup> The guidelines suggest that a maximum reasonable rate should be set at the fully-allocated cost level, computed using a ton/ton-mile constant cost allocation. The Commission believed this approach would reflect demand by requiring heavy-loading, long distance movements to pay a greater share of constant costs. In addition, the Commission acted to protect shippers who have relied on rates negotiated with the carriers prior to the

<sup>21</sup> Ex Parte No. 320 (Sub No. 2), *Market Dominance Determinations*, 365 I.C.C. 118 (1981); Ex Parte No. 320, *Rail Market Dominance*, 365 I.C.C. 116 (1981).

<sup>22</sup> Ex Parte No. 399, *Cost Recovery Percentage*, (not printed), notices decided January 21, 1981 and March 30, 1981.

<sup>23</sup> Ex Parte No. 386, *Increased Freight Rates and Charges—Nationwide—1981* (not printed), decided December 12, 1980.

<sup>24</sup> Ex Parte No. 290 (Sub No. 2), *Railroad Cost Recovery Procedures*, 364 I.C.C. 841 (1981).

<sup>25</sup> Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981).

<sup>26</sup> Ex Parte No. 416, *Railroad Revenue Adequacy—1980 Determination*, 365 I.C.C. 285 (1981).

<sup>27</sup> Ex Parte No. 415, *Railroad Cost of Capital—1981* (not printed), notice decided August 19, 1981.

<sup>28</sup> Ex Parte No. 347 (Sub No. 1), *Coal Rate Guidelines—Nationwide*, 364 I.C.C. 360 (1980).



passage of the Staggers Rail Act contract rates provisions.<sup>29</sup> In a related proceeding involving rates on iron ore, the Commission refused to hold carriers to a negotiated rate when the rate was inconsistent with the public interest.<sup>30</sup> In rate reasonableness cases generally, the Commission determined that product competition should not be considered in the reasonableness analysis.<sup>31</sup>

In other rate areas, regulations were proposed or adopted to simplify and open up the Special Docket process to the public,<sup>32</sup> permit electronic transmission of freight bills and loss and damage claims,<sup>33</sup> modernize tariffs,<sup>34</sup> and establish a minimum standard for released-rate publication.<sup>35</sup> In the area of car hire charges, the Commission proposed greater flexibility for car hire charges in order to offer greater protection for the equity interests of car owners, to ensure an adequate national fleet of freight cars, and to improve the short-term allocation of railroad freight cars. Downward flexibility in the setting of car hire charges was proposed and adopted and upward flexibility was also proposed.<sup>36</sup>

Finally, the Commission began implementation of the Staggers Rail Act intrastate rate provisions.<sup>37</sup> Under Section 214, the Commission required the states to submit their standards and procedures for railroad regulation to the Commission to be certified as conforming to Federal law. The Commission concluded that insufficient information was submitted and requested more. Forty states were provisionally certified pending final action. Section 214 also permits rail carriers to petition the Commission for relief if the carriers believe that state denial of rate actions is not lawful under Federal standards.

### Joint Rate Surcharges and Cancellations<sup>38</sup>

Fiscal year 1981 marked the first year in which railroads were authorized by statute<sup>39</sup> to impose surcharges or to cancel joint rates unilaterally. While special conditions and procedures must be followed, individual railroads now can

<sup>29</sup> No. 36970, *Annual Volume Rates on Coal—Flint Creek, AR*, 364 I.C.C. 754 (1981).

<sup>30</sup> No. 37507, *Rates on Iron Ore, Randville to Escanaba via Iron Mtn.*, 365 I.C.C. 144 (1981).

<sup>31</sup> Ex Parte No. 320 (Sub No. 2), *Market Dominance Determinations*, 365 I.C.C. (1981).

<sup>32</sup> No. 37130 (Sub No. 1), *Special Docket Proceedings—Waiver of Insignificant Amounts and Simplifications of Procedures* (not printed), notice decided January 12, 1981.

<sup>33</sup> Ex Parte No. 263 (Sub No. 3), *Electronic Transmission of Loss and Damage Claims*; Ex Parte No. 406, *Electronic Transmission of Freight Bills* (not printed), notice decided June 16, 1981.

<sup>34</sup> Ex Parte No. 370, *Tariff Improvement*, 365 I.C.C. 43 (1981).

<sup>35</sup> Ex Parte No. 390, *Rail Rates Based on Limited Liability* (not printed), decided December 22, 1980.

<sup>36</sup> *Zone of Reasonableness for Car Hire Charges*, 364 I.C.C. 291 (1980); Ex Parte No. 334 (Sub No. 5), *Zone of Reasonableness Car Hire Charges* (not printed), notice decided October 29, 1980.

<sup>37</sup> *State Intrastate Rail Rate Authority*, 364 I.C.C. 881 (1981).

<sup>38</sup> This section fulfills the requirements under Section 217(c)(1) of the Staggers Rail Act, P.L. 96-448, for the Commission to report in its Annual Report to Congress on the following concerning joint rate surcharges and cancellations: (a) the effect on shippers, ports, Class II and Class III rail carriers, railroad employees, etc., (b) the number of surcharges, revenue collected from them, and the number of joint rate cancellations by the Consolidated Rail Corporation and all other rail carriers, and (c) operation of special remedies available to Class II and III rail carriers under Section 217.

<sup>39</sup> Section 10705a of Title 49, *United States Code*, introduced by the Staggers Rail Act, effective October 1, 1980.



independently adjust charges previously set in conjunction with other railroads on interline traffic. The primary purpose of this new freedom is to bring expeditious relief from noncompensatory joint rates or divisions of joint rates.

For purposes of reporting on the extent of surcharge activity, the Commission counts as one surcharge an application of one or more surcharge amounts to a particular category of traffic as defined by the surcharge tariff; such a category may be as narrow as traffic in and out of a small branch line or as broad as all traffic of a major commodity like pulpboard between two territories—e.g., Southern and Eastern. On this basis, railroads filed 114 surcharges that became effective during the year; Conrail alone accounted for 70. On the basis of surcharge levels in effect at the end of the fiscal year, the ICC estimated that railroads were collecting revenues from the surcharges at the rate of \$26.6 million a year, of which Conrail alone accounted for \$23.6 million. Revenues actually collected during the fiscal year from the surcharges are estimated at \$9.6 million. See Appendix B, Table 16 for a summary of the number of surcharges and revenue generated by railroad group and type of surcharge (commodity or light density line). A majority of the surcharges, 63, were commodity-oriented; these also account for the preponderance of revenues generated (on an annualized basis)—\$20.1 million. Of the 51 light density line surcharges, Conrail accounted for 37. Ten Class III carriers filed 27 surcharges. Surcharges placed on the following commodities account for 78 percent of the revenues collected from commodity surcharges: furniture, pulpboard, paper bags, wrapping paper, vinyl chloride and malt liquors. Twenty of these surcharges were filed by Conrail

and the Delaware and Hudson Railroads to apply to traffic between southern and eastern territories.

The Commission identified 14 actions during FY 1981 that constitute cancellations of joint rates under the new legislation. Of these, Conrail initiated nine. The commodities on which joint rates were cancelled were lumber, plywood, grain, flour, wheat, soda ash, and recyclables other than iron and steel scrap. But many other commodities were affected by routing restrictions and gateway cancellations.

Conrail led the rail industry in application of surcharges. Many of the surcharges were applied on a broad, interterritorial movement basis. In response, connecting railroads filed a few tariffs to cancel application of the surcharges, but all were rejected by the Commission. Under procedures established by the new legislation, connecting railroads may preclude application of surcharges on particular routes if they can show the surcharges yielding revenue to variable cost ratios exceeding 110 percent are inconsistent with the public interest. Shippers making that showing also may petition the Commission for cancellation.

The revenue to variable cost calculations are made by the ICC's Bureau of Accounts from movement information submitted by shippers or carriers. During FY 1981, the bureau received 229 requests for such calculations covering 21,690 movements in a partial reflection of the breadth of Conrail's surcharge applications. In none of the 35 suspension cases involving surcharges did the Commission order cancellations or reductions of surcharges or even undertake an investigation. The reason was that shippers did not adequately show that they had no competitive alternative. But Commission action often was obviated by the carriers' (especially Conrail's) voluntary rollbacks and postponements

to reflect revenue to variable cost ratios calculated to exceed 110 percent. Evidently, carriers imposing surcharges were making every effort to avoid litigation. Several significant surcharges were postponed for several weeks to accommodate the large volume of voluntary revisions and the early court challenges to Conrail's blanket approach. Conrail's first surcharge filing was on furniture. Originally it was scheduled to become effective on December 13, 1980 but it did not actually go into effect until February 28, 1981. By the end of March 1981, the Commission revised rules for obtaining movement information for the revenue/variable cost calculations to relieve carriers that imposed surcharges from the need to provide actual waybill data for individual movements, thus providing further impetus for surcharge filings.<sup>40</sup> In a separate proceeding, the ICC proposed rules to govern light density line surcharges.<sup>41</sup>

The single action by Conrail that placed the greatest evidentiary burden on shippers and connecting railroads involved not surcharges but a far-ranging elimination of gateways and restriction of routings on most interterritorial traffic. In this, as in other Conrail actions to cancel joint rates (involving grain and recyclables other than iron and steel), the Commission set the case for investigation without suspension. Forty-one requests for revenue to variable cost ratio calculations were received by the Bureau of Accounts in FY 1981 covering 2,634 movements subject to proposed joint rate cancellations. Prospects are for a large increase in this number with continued

filing of joint rate cancellations during FY 82.

For all the apparent activity under the new provisions on joint rate surcharges and cancellations, relatively few movements were actually subject to higher charges as a result. The ICC estimated that only .5 of one percent of all carloads were subject to surcharges. Even as a portion of specific commodity groups, the percentage of traffic with surcharges added is low, e.g., only 5.4 percent of compressed, liquified industrial gases and industrial organic chemicals and 4.1 percent of wrapping paper. For those shipments with surcharges, however, the surcharge usually represents a significant portion of line-haul revenues. Five arbitrarily selected branch line surcharges showed a range of 11 percent (Missouri Pacific) to 40 percent (Conrail, Connecticut lines). Three examples of commodity surcharge impacts are 1.9 percent for Delaware and Hudson on paper bags, 13.9 percent for Conrail on southwestern/official movements of furniture, and 16.2 percent for Conrail on paper bags.

Increases of this magnitude are apt to cause some shift away from rail. Using a rating system developed in a previous research study for rail market dominance,<sup>42</sup> the ICC found that nine of the commodities on which surcharges were imposed tend to be railbound, ten were fairly to highly divertible and one was about average. Similarly, the fate of branch lines subject to surcharges is uncertain; many may be closed down as

<sup>40</sup>Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation* (not printed), decided March 19, 1981.

<sup>41</sup>Ex Parte No. 402, *Reasonably Expected Costs* (not printed), decided January 21, 1981.

<sup>42</sup>"A Study to Perform An In-Depth Analysis Of Market Dominance And Its Relationship To Other Provisions Of The 4R Act, Interim Report-1," Prepared by Kearney Management Consultants, April 10, 1979 (Exhibit V-22).

traffic vanishes. Of greater impact on branch lines in the future—those on Conrail at least—will be the Northeast Rail Service Act of 1981, P.L. 97-35, enacted August 13, 1981. Conrail likely will seek relief from branch line losses by abandoning lines under that legislation rather than imposing more surcharges.

As for Conrail's action restricting routes and gateways from application of joint rates, shippers in all cases can still avail themselves of the same rates as before by selecting an appropriate Conrail route. The primary impact noted by shippers was the expected loss of special equipment privileges that connecting lines previously accorded shippers utilizing routes favored by those lines.

In general, the ICC notes little impact on ports, Class III carriers, or employees, largely in view of the small proportion of traffic so far affected.

The special remedies made available under the Staggers Rail Act<sup>43</sup> to Class II and Class III carriers have not yet become operational. The reasons for this are twofold. First, there were only two cases where eligible carriers petitioned for relief under one or more of these subsections.<sup>44</sup> Second, the Commission declined to act on any of these petitions because of an inadequate record. To remedy the problem, the Commission is continuing the investigations in both cases. In one of the two, involving grain,<sup>45</sup> the Commission has established standards for the evidence that is required to

address the issues associated with these subsections, particularly issues concerning rate differentials and financial or market losses.<sup>46</sup> When these standards are established and filings reflect the necessary data, the Commission fully expects to be able to act on Class III carrier petitions within the required 30 days.

### Construction, Acquisition and Operation

In August, the Commission proposed to modify its regulations for applications to construct, acquire and operate railroad lines.<sup>47</sup> The revisions were proposed to conform to current transportation policy as reflected in recent legislation. Also, the revisions were designed to streamline the application process and to eliminate redundant information requirements. Final rules were expected to be issued early in calendar year 1982.

Fiscal year 1980 was an active year for railroad construction. The Commission approved the construction and operation of a rail line in the coal-producing Powder River Basin of Wyoming and Nebraska.<sup>48</sup> Under the proposal, the Chicago and North Western Transportation Company (CNW) would construct a 56-mile connector line to a rail line now being operated by the Burlington Northern Railroad Company (BN). Both carriers would serve the Basin over jointly operated line.

In New Mexico, Star Lake Railroad Company, a wholly owned subsidiary of the Atchison, Topeka and Santa Fe Railway Company, proposed to con-

<sup>43</sup> §10705a(i), (j) and (k) for Class III rail carriers and (1) for Class II and Class III carriers.

<sup>44</sup> No. 38689, *Restructured Rates on Grain Products*, Conrail and No. 38679, *Restructured Rates on Recyclables O/T Iron or Steel Scrap*, Conrail.

<sup>45</sup> No. 38689, *supra*.

<sup>46</sup> Subsections (j) and (k).

<sup>47</sup> Ex Parte No. 392, *Application Proc.—Construct, Acq. or Oper. R. Lines*, 365 I.C.C. 236 (1981).

<sup>48</sup> *Chicago & N.W. Transp. Co.—Construction*, 363 I.C.C. 905 (1981).

struct an 82-mile line to serve coal mines there.<sup>40</sup> The Commission reopened the record for further study of the impact of the construction on the Continental Divide National Scenic Trail. A final decision on the application was expected early in FY 1982.

In New York, Somerset Railroad Corporation, a wholly owned subsidiary of New York State Electric & Gas Corporation, seeks to construct a 28-mile railroad line in Niagara County, NY to serve a new electric generating plant.<sup>41</sup> Three possible routes have been proposed, and hearings were scheduled for November 1981.

In the area of railroad acquisition and operation, the significant activity has involved the purchase and operation of portions of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee) and the Chicago, Rock Island and Pacific Railroad Company (Rock Island).

In September 1980, 19 offers were filed to purchase portions of the Milwaukee and Rock Island.<sup>42</sup> These offers cannot be processed until an agreement for the purchase has been reached with the trustees of the bankrupt railroad. General offerors negotiated purchase agreements with the trustees, and these applications were approved.<sup>43</sup> In the *Continental*

*Group*, the Commission explained the criteria which will be applied to these purchase applications.

In addition, in March 1981, the Commission authorized the Pend Oreille Valley Railroad, Inc. to operate a 61-mile line of the Milwaukee which extends between Newport and Metaline Falls, WA.<sup>44</sup> In that same month, the Commission, Division 2, authorized the Seattle & North Coast Railroad Company to operate another Milwaukee line between Seattle and Port Angeles, WA.<sup>45</sup>

## Abandonments

The Commission received 162 applications to abandon 3,232 miles of rail lines in fiscal year 1981. The Commission acted on 140 applications during the year, granting 139—2,914 miles of rail lines—and denying one.

In addition, the Commission recommended to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's Reorganization Court that five Milwaukee Road abandonment applications (involving 692 miles) be granted.

The Commission implemented changes in abandonment procedures required by the Staggers Rail Act of 1980.<sup>46</sup> The most significant changes (1) reduce the time

<sup>40</sup> Finance Docket No. 28272, *Star Lake Railroad Company Rail Construction and Operation in McKinley County, NM* (not printed), served July 8, 1981.

<sup>41</sup> Finance Docket No. 29254, *Somerset Railroad Corporation—Construction and Operation of a Line of Railroad in Niagara County, NY*.

<sup>42</sup> These purchase offers were filed under the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 96-254 (1980).

<sup>43</sup> *Continental Group, Inc.—Pur.—Chicago, R.I. & P.R. Co.*, 363 I.C.C. 822 (1980) and *Cedar Rapids and Iowa City Railway Company—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Company (William M. Gibbons, Trustee) Between Iowa City and Hills, IA* (not printed), served July 7, 1981.

<sup>44</sup> Finance Docket No. 29197, *Pend Oreille Valley Railroad, Inc.—Operation of a Line of Railroad in Pend Oreille County, WA* (unprinted decision served March 4, 1981).

<sup>45</sup> Finance Docket No. 29158, *Seattle & North Coast Railroad Co.—Acquisition and Operation of Line of Railroad in the State of Washington* (not printed), served March 26, 1981.

<sup>46</sup> *Abandonment of R. Lines & Discontinuance of Serv.*, 365 I.C.C. 249 (1981).



for processing abandonment and discontinuance applications, (2) eliminate the automatic right to appeal initial decisions and (3) empower the Commission to set the terms for offers of financial assistance for continued rail service.

In the financial assistance area, the Commission is now able to require an abandoning carrier to sell its line or perform subsidized operations. The Commission has determined that in normal circumstances when a line is being abandoned, the "fair market value of the line" for a purchase is the net liquidation value.<sup>86</sup> In the case of a subsidy offer, the Commission cannot predict with certainty the actual cost of future operations; consequently, it will prescribe the methodology to be applied in determining the final subsidy payment.<sup>87</sup>

In considering the merits of abandonment applications, the Commission has looked at a carrier's opportunity costs, among other factors. A carrier's opportunity cost can be determined by (1) ascertaining the amount of funds that would be made available for investment through abandonment (net liquidation value), and (2) estimating the income that a carrier should be able to earn by investing those funds elsewhere.<sup>88</sup>

### Feeder Railroad Development Program

During fiscal year 1981, the Commission adopted rules implementing the feeder line development program

enacted in Section 401 of the Staggers Act.<sup>89</sup> This provision gives shippers and interested persons (other than Class I and II railroads) an opportunity to preserve feeder lines prior to their downgrading or abandonment. Two types of lines can be purchased under the feeder line development program. Any line identified on the carrier's system diagram map as a potential abandonment candidate but for which abandonment has not yet been sought is eligible. Alternatively, a line can be purchased if the applicant demonstrates that the existing service is inadequate and that the sale will benefit the shippers without harming the owning carrier. A purchaser must pay the owning carrier the constitutional minimum value of the line and must be able to provide adequate service for at least three years. The Commission's rules are designed to encourage privately negotiated agreements; the Commission will set the value only if the parties fail to agree. During the fiscal year, two competing applications<sup>90</sup> and several notices of intent to file feeder applications were submitted.

### Exemptions

In continuing efforts to minimize unnecessary regulation and reduce regulatory lag, the Commission granted approximately 65 exemptions of individual rail transactions with little public or transportation impact. The transactions included securities issuances, new operations, lease and trackage rights agreements, acquisitions and abandonments.

<sup>86</sup> *Chicago and North Western Transp. Co.—Abandonment*, 363 I.C.C. 956 (1981).

<sup>87</sup> *Illinois Central Gulf R. Co.—Abandonment*, 363 I.C.C. 866 (1981).

<sup>88</sup> *Texas and Pacific Railway Company Abandonment*, 363 I.C.C. 666 (1980); *Illinois Central Gulf R. Co.—Abandonment*, 363 I.C.C. 729 (1980).

<sup>89</sup> *Feeder Railroad Development Program*, 365 I.C.C. 93 (1981).

<sup>90</sup> Finance Docket No. 29601, *Indiana Hi-Rail Corporation—Feeder Line Acquisition—Conrail Line between Beesons and Connersville, IN*, and Finance Docket No. 29664, *The Indiana & Ohio Railroad, Inc.—Feeder Line Acquisition—Conrail Segment between Beesons and Connersville, IN*.



Exempting these transactions from regulation enabled the railroads to avoid the delays, extensive paperwork and expense involved in preparing and processing applications for Commission approval of minor transactions, and enabled the Commission to reallocate its staff resources to areas where they were most needed.

Also, the Commission granted a number of temporary exemptions which allowed railroads to continue service to communities while the Commission analyzed the implications of permanent rail operations.<sup>41</sup>

The Staggers Rail Act of 1980 eliminated the requirement that the Commission conduct a proceeding in all exemption cases. This enabled the Commission to adopt new procedures in December 1980 which greatly expedited decisions in this area.<sup>42</sup>

## Passenger Service

The Commission's authority over Amtrak's adequacy of service was repealed by the Amtrak Reorganization Act of 1979,<sup>43</sup> resulting in the elimination of the ICC's adequacy of service regulations.<sup>44</sup> The ICC retains authority, in the event Amtrak and private railroads or

regional transportation authorities are unable to agree, to order a railroad to provide services or the use of its tracks or facilities for Amtrak and to set the terms and compensation for such use.

The Commission authorized Chesapeake and Ohio Railway Company (C&O) to discontinue its car ferry operations across Lake Michigan between the ports of Ludington, MI and Manitowoc, WI.<sup>45</sup> However, C&O continues to operate a passenger and car ferry between Ludington and Kewaunee, WI. In addition, the Ann Arbor Railroad, in conjunction with the State of Michigan, operates a ferry between Frankfort, MI and both Kewaunee and Manitowoc.

The application by Magner-O'Hara Scenic Railway to provide a scenic passenger service between Detroit and Traverse City, MI was dismissed for lack of jurisdiction. The proposed rail service was solely intrastate with no plans for interstate or international connections.<sup>46</sup>

Auto-Train Corporation, which provided a passenger-auto service between Lorton, VA and Sanford, FL, filed a petition for reorganization under the bankruptcy laws on September 8, 1980. The Commission's Special Permission Board granted the carrier a fare increase on

<sup>41</sup> See, e.g., Finance Docket No. 29560, *Chicago, Madison and Northern Railway Company—Exemption under 49 U.S.C. 10505 from 49 U.S.C. 10901* (not printed), decided January 29, 1981; Finance Docket No. 29486 (Sub No. 1), *Delaware and Hudson Railway Company—Exemption under 49 U.S.C. 10505 from 49 U.S.C. 11343* (not printed), decided January 27, 1981; Finance Docket No. 29408F (Sub No. 1), *TransKentucky Transportation Railroad, Inc.—Exemption under 49 U.S.C. 10505 from 49 U.S.C. 10901* (not printed), decided December 23, 1980.

<sup>42</sup> Ex Parte No. 400, *Modification of Procedure for Handling Exemptions Filed under 49 U.S.C. 10505*, 45 Fed. Reg. 85180 (December 24, 1980) and 46 Fed. Reg. 7505 (January 23, 1981).

<sup>43</sup> P.L. 96-73, 93 Stat. 537-558.

<sup>44</sup> 49 C.F.R. Part 1124.1 et. seq.

<sup>45</sup> Docket N. AB-18 (Sub No. 36), *Chesapeake and Ohio Railway Company—Abandonment—In Mason County, MI and Manitowoc County*.

<sup>46</sup> Finance Docket No. 29161, *Magner-O'Hara Scenic Railway—Operation—In the State of Michigan* (not printed), decided May 6, 1981.

short notice at the Trustee's request in order to permit Auto-Train to generate additional operating funds.<sup>67</sup>

The Commission extended Auto-Train's authority to provide service in conjunction with Central Florida Coach Line, Inc. (Auto-Bus).<sup>68</sup> A temporary exemption was granted so that service could continue pending consideration of permanent authorization of that service.<sup>69</sup>

The Commission denied a joint request of Auto-Train and Seaboard Coast Line Railroad Company (SCL) to exempt the proposed modification of their operating agreement. Because of Auto-Train's precarious financial position and its continuing policy of delaying refund payments to customers, regulation review was considered necessary.<sup>70</sup>

The Commission attempted to protect the public from Auto-Train's questionable financial practices by requiring the carrier to set up an independently controlled escrow account for advance payments as a condition for approval of a

promissory note issuance.<sup>71</sup> However, Auto-Train halted operations on May 1, 1981, after it ran out of operating funds. The Commission requested the Bankruptcy Court to give priority to refund requests for advance ticket sales that were never used.

In September 1981, VIA Rail Canada Inc. (VIA) requested an exemption for its proposed discontinuance of the Maine portion of its "Atlantic Limited" passenger train service.<sup>72</sup> The Commission was considering VIA's exemption request at the end of the fiscal year.

## Freight Car Service

Fiscal year 1981 was generally characterized by an unprecedented surplus of virtually all types of freight cars. The surplus was caused partly by a decline in rail traffic which resulted from the state of the Nation's economy. The freight car surplus, which began in mid-1980 and continued throughout fiscal year 1980, reached levels of reported average daily surpluses of over 200,000 cars.

Also reflecting this surplus situation, Class I railroads reported a net reduction in the combined owned car fleet of 58,754 cars from a total of 1,184,490 cars owned on October 1, 1980. Freight car retirements in fiscal 1981 consisted of 81,774 cars while acquisitions totalled 23,020 cars. Considering the entire car fleet of Class I, Class II, Class III, switching and terminal companies, and private car companies, there was a decrease of

<sup>67</sup> Special Permission Board No. 81-1980, superseding No. 81-1928 (not printed), decided February 11, 1981.

<sup>68</sup> This service was first authorized in Service Order No. 1374, *Auto-Train corporation Authorized to Transport Automobiles between Alexandria (Lorton), Virginia and Sanford, Florida* (not printed), decided April 12, 1979, and extended periodically thereafter. However, the Commission determined that the Auto-Train situation was not a national emergency and that indefinite use of this means of preserving service would be inappropriate.

<sup>69</sup> Finance Docket No. 29604, *Auto-Train Corporation—Temporary Exemption under 49 U.S.C. 10505 from 49 U.S.C. 10901* (not printed), decided March 25, 1981.

<sup>70</sup> Finance Docket No. 29276, *Auto-Train Corporation and Seaboard Coast Line Railroad Company—Consolidation—Exemption under 49 U.S.C. 10505 from 49 U.S.C. 11343-11347* (not printed), decided June 18, 1980.

<sup>71</sup> Finance Docket No. 29190, *Auto-Train Corporation—Note* (not printed), decided March 20, 1980, modified by decisions dated March 27, 1980 and July 7, 1980.

<sup>72</sup> Finance Docket No. 29746, *VIA Rail Canada Inc.—Exemption—Discontinuance of Passenger Service*.

24,984 cars during fiscal 1981. Most of the freight car equipment added was of high capacity designed to move large amounts of grain and other dry bulk commodities.

Over a ten year period there has been a net gain of 12 tons per car in carrying capacity for Class I carriers but a net loss of 7,172,000 tons of aggregate capacity because more cars were retired than acquired. While the average capacity of installations during the year was 96 tons per car, compared with 69 tons per car retired, the sizeable retirements reduced the aggregate carrying capacity of the car fleet by 3,229,000 tons.

In contrast, freight carloadings during this fiscal period decreased by only two percent, approximately 458,996 cars, when compared with fiscal year 1980. Grain and coal traffic comprised nearly one third of all carloadings. While grain carloadings were 7.7 percent or 121,166 cars below the previous year's levels, this was offset by increases in coke and coal loadings of 15.5 percent, or 44,371 cars, and 1.5 percent, or 84,155 cars, respectively. The net decrease in carloading resulted from a decrease in general commodities shipments.

Class I railroads reduced their locomotive ownership from 28,596 on October 1, 1980 to 27,846 on October 1, 1981, a decrease of 750 units. As of October 1, 1981, Class I railroads had 187 diesel locomotives on order, including 141 multi-purpose and 46 freight units. Additionally, there were 41 rebuilt units on order, including 20 multi-purpose, 15 freight and 6 switching units.

Emergency service orders were issued under the Rock Island Transition and Employee Assistance Act (RITEA) authorizing interim operations over portions of the Rock Island and Milwaukee

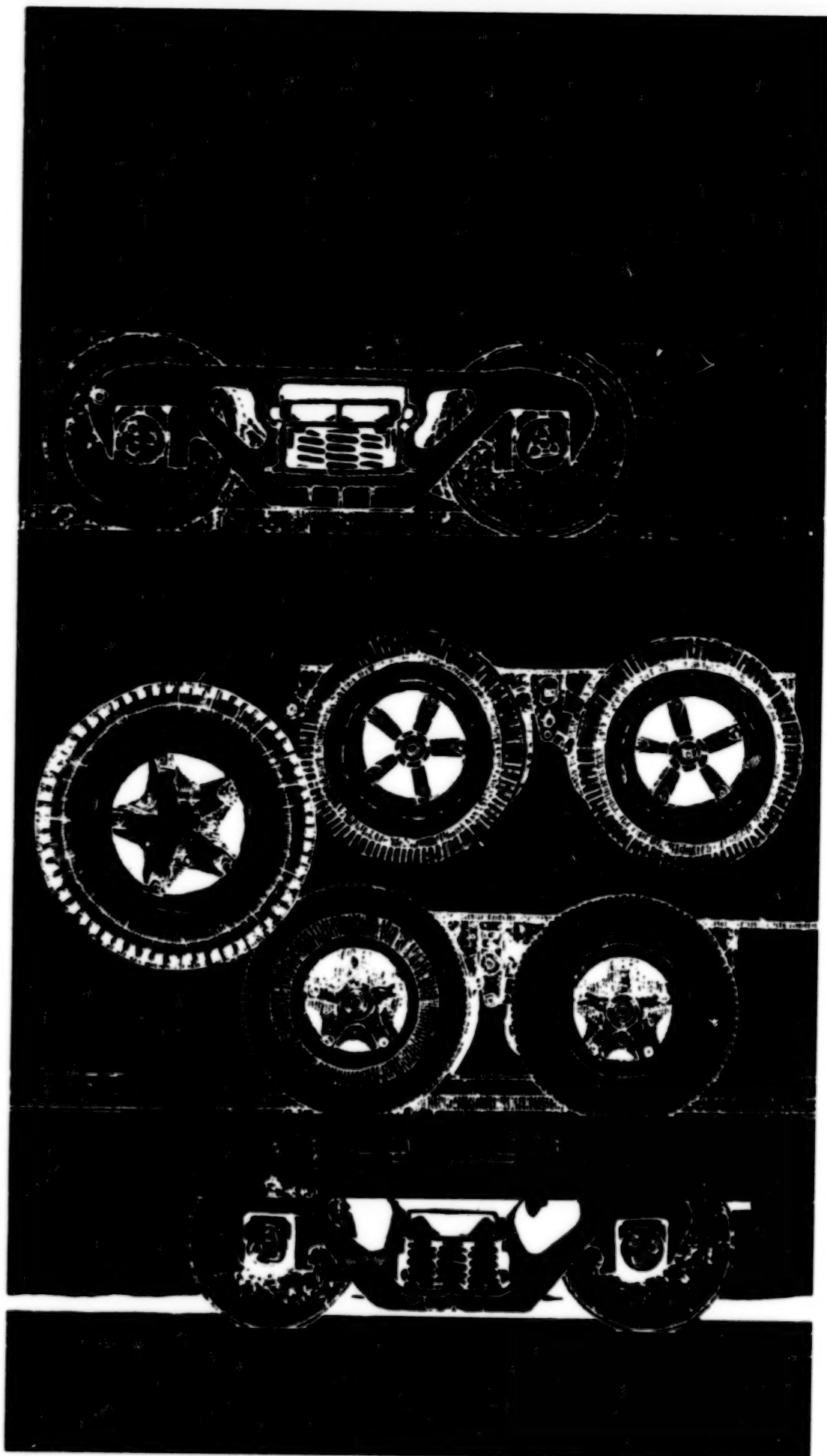
Railroads, which are in bankruptcy proceedings, to ensure continuation of essential rail service to shippers. As of September 30, 1981, there were 23 various railroads providing service over tracks of the former Chicago, Rock Island and Pacific Railroad Company (William M. Gibbons, trustee) and six carriers providing rail service over tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, trustee). These authorizations provided for service over approximately two thirds of the route miles of the former Rock Island with service to 75 percent of the industries located on those lines.

## Securities

Seventy-five applications to issue securities and 11 petitions for modification of previous authorities to issue securities were filed by railroads in fiscal 1981 as well as 11 requests for exemption from competitive bidding requirements. To expedite action, the Commission permitted railroads to combine competitive bidding exemption requests with the securities applications rather than in advance.

Railroads were authorized to issue approximately 22,121,284 shares of stock for all purposes; \$61,800,000 principal amount of notes; and \$877,444,359 principal amount of equipment trust certificates. In addition, railroads were allowed to assume obligation and liability with respect to \$20,500,000 of bonds.

Interest cost of borrowings rose steadily during the year, from 11.9 to 14.9 percent for equipment trust certificates. Many railroads deferred borrowings to await a more favorable interest rate.



## TRUCKING COMPANIES

### General Financial Condition

During fiscal 1981, the trucking industry began to adjust to the new environment created by the Motor Carrier Act of 1980 while at the same time coping with a general slump in business activity. For the 12 month period ending June 30, 1980, the 100 largest motor carriers hauled 198.2 million tons of revenue freight. This was 6.8 percent less than the amount these carriers hauled during the previous 12 month period. Total revenues increased 6.7 percent over the previous year's level to \$20.6 billion, and net income increased 23.3 percent to \$532.5 million. Omitting the two United Parcel Service (UPS) corporations from the group of 100 (a common way to present the data), tonnage fell 7.3 percent, revenues rose 3.7 percent and net income fell 1.8 percent.

The return on equity (ROE), which measures the profit per dollar invested by owners of carriers, was substantially higher in the latest 12 months for these 100 largest motor carriers. The ROE was 18.1 percent for the year ending June 30, 1981, compared with 13.8 percent for the year ending June 30, 1980. Excluding UPS, the ROE still increased, moving to 12.2 percent from 11.4 percent. These improvements contrast with a worsening of the ROE for manufacturing in general. As reported by the Federal Trade Commission, the ROE for all manufacturing fell from 15.3 percent in the earlier period to 14.1 percent in the recent one. This conforms to the pattern seen in recent years of the trucking ROE recovering from a recession-induced drop earlier than the manufacturing ROE.

Two factors explain the improvement in the trucking industry's ROE while tonnage (a measure of output) fell. First, by reducing variable cost, the 100 carriers

were able to hold the percent increase in total costs below the percent increase in revenues so that net income rose. Excluding UPS, costs were still held down sufficiently that net income fell only slightly. Second, the net income was earned on a smaller total investment by owners. Total equity was lower on the average in the year ending June 30, 1981 than in the previous year because of the loss of the value of operating certificates and permits. This loss, about \$431.5 million for the 100 largest carriers, or about 14 percent of total equity for the group, largely occurred on July 1, 1981 as a result of passage of the Act, although many carriers did not adjust their books until the end of the calendar year. The drop in the size of the equity base of the ROE ratio contributed to the increase in its value.

### Mergers and Unifications

The Motor Carrier Act of 1980 made three substantial changes in acquisition proceedings. The Act imposed deadlines on case processing, raised the monetary exemption and altered the standards for motor pooling applications. The Commission adopted procedures to streamline case processing<sup>1</sup> and to govern motor pooling applications.<sup>2</sup>

Under the new rules, the Commission will waive information filing requirements where the information normally required is unavailable, unnecessary or unduly burdensome.<sup>3</sup>

<sup>1</sup> *Rules Governing Applications Filed Under Sections 11344 and 11349*, 363 I.C.C. 740 (1981)

<sup>2</sup> *Motor Carrier Pooling Application*, 127 M.C.C. 746 (1981).

<sup>3</sup> See *Ryder System, Inc.—Control—Atlantic Express, Inc.*, 127 M.C.C. 728 (1980).



The Commission considered such factors as degree of opposition, the current regulatory environment, the combined carrier national market share, and the extent of carrier revenue and traffic overlap, in clarifying the role of competitive analysis in motor acquisition proceedings.<sup>4</sup> The Commission also decided that the total fixed charges resulting from a motor acquisition proposal represent the sole financial criterion to be considered.<sup>5</sup>

The policy against holding duplicate operating rights or splitting such rights was reevaluated.<sup>6</sup> Also, the Commission reexamined its policy of imposing extraordinary financial conditions on parent companies<sup>7</sup> and removed previously imposed conditions.<sup>8</sup>

### Securities

In fiscal year 1981, 65 applications and nine petitions were filed for authority to issue securities or to modify prior authority.

Trucking companies were authorized to issue 6,855,947 shares of stock for all purposes; \$5,500,000 principal amount of bonds; and \$120,560,135 principal amount of notes. In addition, they were authorized to assume obligation and liability with respect to \$20,030,000 of notes and \$11,175,000 of bonds.

High interest rates and declining

operating profits slowed down investment in equipment and plant, while a drop in earnings of many companies increased the demand for working capital. Some sought to reduce their interest costs by guaranteeing securities issued by public authorities which in turn loaned the funds to the companies.

There also was an increase in employee stock option and purchase plans as some trucking companies sought to offset demands for higher wage increases during a period of declining earnings.

### Rates

In a major decision, the Commission replaced a revenue-based surcharge with a program to reimburse owner-operators for fuel costs above 63.5 cents per gallon.<sup>9</sup> Reimbursement will be on a mileage basis, paid at a rate of  $x$  cents per mile. The purpose of the surcharge program was to assure that owner-operators were adequately compensated for rapidly escalating fuel costs. However, the surcharge had not accurately reflected the fuel-related cost component of a rate and thus resulted in severe distortions in the rate structure. The new program should provide fair and adequate compensation to owner-operators while protecting shippers from excessive costs. The Commission's action was stayed by a court order and thus the prior procedures continued to be used pending further court order.

The Motor Carrier Act of 1980 established new requirements and standards for motor carrier rate bureaus as a condition precedent to continued antitrust immunity. The general thrust of the new

<sup>4</sup> *Red Ball Motor Frt. Inc.—Control and Merger—Spector*, 127 M.C.C. 737 (1980). A broader exploration of the role of competitive factors in motor acquisition proceedings is underway in *Antitrust and Competition Factors*, 127 M.C.C. 657 (1980).

<sup>5</sup> *BHY Trucking Inc.—Pur.—Roadway Exp., Inc.*, 127 M.C.C. 731 (1980).

<sup>6</sup> See *Control of Duplicate Operating Rights*, 127 M.C.C. 756 (1981), and *Curtis Transports—Transferee*, 127 M.C.C. 769 (1981).

<sup>7</sup> *Short Frt. Lines, Inc.—Pur.—Red Line Exp., Inc.*, 127 M.C.C. 724 (1980).

<sup>8</sup> *C&H Transp. Co., Inc.—Pur.—Equipment*, 127 M.C.C. 764 (1981), and *International Util.—Control—Pacific Intermountain*, 127 M.C.C. 752 (1981).

<sup>9</sup> Ex Parte No. 311 (Sub No. 4), *Modification of the Motor Carrier Fuel Surcharge Program* (not printed), decided October 5, 1981.

standards is to infuse additional competition into the ratemaking process. The Commission has explained and implemented these rate bureau provisions.<sup>10</sup> New conforming agreements have been filed and are under review.

In two other significant decisions, the Commission proposed to revise the national motor carrier classification,<sup>11</sup> and to repeal or revise the uniform detention rules that presently apply to motor carriers of property.<sup>12</sup>

A number of pending proceedings address issues related to determinations of rate reasonableness. As permitted by the Motor Carrier Act of 1980, the Commission proposed allowing motor carriers to provide for the recovery of foreseeable future costs in general increase filings.<sup>13</sup> The Commission is also considering revenue standards for motor increase proceedings,<sup>14</sup> and is reviewing the validity of a new study of the costs of handling small shipments.<sup>15</sup>

In other major rate regulation actions, the Commission proposed authorizing individual carriers to establish their own nondiscriminatory C.O.D. procedures,<sup>16</sup> and allowing the electronic transmission of freight bills and loss and damage

claims.<sup>17</sup> Also under consideration are proposals to repeal or revise credit regulations for all modes<sup>18</sup> and to allow more extensive cancellation of joint rates, with one proviso being that routes must be maintained until affected shippers have found suitable alternatives.<sup>19</sup> The purpose of these proceedings generally is to allow carriers to provide better service to the public at a lower cost.

## Operating Rights

The major thrust of Commission decisions in this area involved implementing the entry provisions under the Motor Carrier Act of 1980 and finalizing several of the proceedings instituted by the Commission during the fiscal year.

The Commission adopted without significant changes the interim rules established to handle applications for permanent operating rights filed immediately after the passage of the Act. The rules simplify and expedite procedures for processing applications in order to meet the statutory time limits for issuance of an initial decision and to reflect an appli-

<sup>10</sup> Ex Parte No. 297 (Sub No. 5), *Motor Carrier Rate Bureaus—Imp. of P.L. 96-296*, 364 I.C.C. 921 (1981).

<sup>11</sup> Ex Parte No. MC-98 (Sub No. 1), *Investigation into Motor Carrier Classification*, 364 I.C.C. 906 (1981).

<sup>12</sup> Ex Parte No. MC-88, *Detention of Motor Vehicles—Nationwide*, (not printed), notice decided February 26, 1981.

<sup>13</sup> Ex Parte No. MC-82, *Provisions for Foreseeable Future Costs*, (not printed), notice decided June 10, 1981.

<sup>14</sup> Ex Parte No. MC-128, *Revenue Need Standards in Motor Carrier Increase Proceedings*, (not printed), notice decided June 19, 1979.

<sup>15</sup> Ex Parte No. MC-129, *Platform Study of Class I & II Motor Carriers of General Freight*, (not printed), notice decided August 31, 1979.

<sup>16</sup> Ex Parte No. MC-42, *Handling of C.O.D. Shipments*, (not printed), notice decided March 9, 1981.

<sup>17</sup> Ex Parte No. 263 (Sub No. 3), *Electronic Transmission of Loss and Damage Claims*, Ex Parte No. 406, *Electronic Transmission of Freight Bills*, (not printed), notice decided June 16, 1981.

<sup>18</sup> Ex Parte No. MC-1, *Payment of Rates and Charges of Motor Carriers*; Ex Parte No. 73, *Regulations for Payment of Rates and Charges*; Ex Parte No. 143, *Rules and Regulations Governing the Settlement of Rates and Charges of Common Carriers of Property by Water*; Ex Parte No. 170, *Rules and Regulations Governing the Settlement of Rates and Charges of Common Carriers of Property by Express* (not printed), notice decided April 30, 1981.

<sup>19</sup> Ex Parte No. MC-145, *Cancellation—Mot. Car. Joint Rate and Through Routes*, 364 I.C.C. 352 (1980).

cant's reduced evidentiary burden contained in the Act.<sup>20</sup>

The Commission also adopted a proposed policy statement to guide applicants in requesting authority under the Motor Carrier Act. Carriers are to apply for broad, unencumbered authority. Restrictions on authorities generally are disallowed except in unusual instances. Territorial descriptions for irregular route authorities are to encompass areas no smaller than a county. Commodity descriptions are to be stated in terms of generic groups similar to the groups set forth in the Standard Transportation Commodity Code (STCC). Any commodity group proposed by an applicant should be reasonably broad and commensurate with business requirements.<sup>21</sup> Several cases were decided by the Commission which interpret the application guidelines and decisional standards contained in the policy statement.<sup>22</sup>

The Commission adopted rules implementing a provision of the Motor Carrier Act that directs the Commission to process expeditiously applications of motor carriers of property seeking reasonably to broaden categories of property, authorize service to intermediate points, provide round-trip authority, eliminate unreasonably or excessively

narrow territorial limitations, and to eliminate any other unreasonable restriction that is found to waste fuel, be inefficient or contrary to the public interest.<sup>23</sup> A special Restrictions Removal Board was established by the Commission to process the applications.

The procedures have worked well. The Motor Carrier Act establishes a 120 day period for final Commission decision in restriction removal proceedings. From January through October 1981, the Restrictions Removal Unit processed approximately 3500 applications (From filing to issuance of certificated authority) within this statutory framework to reform approximately 20,000 certificates or permits. During this period, the Unit issued permits or certificates in unopposed cases on an average of 65 days from the date of filing. Carriers that have taken advantage of these procedures should be able to achieve reduction in consumption of energy resources, cost savings and improved efficiency, as well as provide better service to the public.

The Commission also adopted a proposed rule to eliminate gateway restrictions and circuitous route limitations from outstanding authorities. A property carrier which is authorized to provide a through service either by joining together separate grants of operating authority or by operating over a single regular route may perform a direct service over any available route.<sup>24</sup>

<sup>20</sup> Ex Parte No. 55 (Sub No. 43), *Rules Governing Applications for Operating Authority*, 364 I.C.C. 508 (1980)

<sup>21</sup> Ex Parte No. 55 (Sub No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, (not printed), decided December 19, 1980.

<sup>22</sup> *Pre-Fab Transit Co. Ext.—Nationwide Gen. Com.*, 132 M.C.C. 409 (1981); *Green Field Transport Co., Inc., Ext.—General Commodities*, 132 M.C.C. 504 (1981)

<sup>23</sup> Ex Parte No. MC-142 (Sub No. 1), *Removal of Restrictions from Authorities of Motor Carriers of Property*, (not printed), decided December 19, 1980.

<sup>24</sup> Ex Parte No. MC-142, *Elimination of Gateway Restrictions and Circuitous Route Limitations*, 132 M.C.C. 359 (1980)

The Commission also adopted proposed rules with minor modifications to exempt from ICC regulation a transportation service performed by a member of a corporate family for other members of the same corporate family. Service may be performed as soon as a notice of intent to engage in compensated intercorporate hauling is filed with the Commission.<sup>25</sup>

The ICC's appellate rules of procedure were streamlined and simplified to comport with the Motor Carrier Act of 1980. A single appeal process is applicable to both rail and nonrail matters. Generally the procedures provide for one level of mandatory review and a discretionary appeal except where the Commission has entered an administratively final initial disposition which voided the requirement for an initial decision.<sup>26</sup>

The Commission proposed the revision of additional policies and procedures which were under consideration at the close of the fiscal year. A rulemaking was instituted to unify and simplify the procedures under which certain temporary authority and emergency temporary authority is issued.<sup>27</sup> Furthermore, the Commission proposed to eliminate its practice of notifying competing carriers when a motor carrier files an application for emergency temporary authority.<sup>28</sup> The changes were proposed to reduce

the expenditure of Commission resources and to enable a more expeditious handling of these time-critical applications.

Commission responsibility to promote safe and adequate transportation prompted consideration of whether it should assert jurisdiction over the transportation of hazardous wastes. The ICC has undertaken to determine whether wastes are property within the meaning of the law.<sup>29</sup> The Commission also is reassessing its policies with regard to the granting of broad authorities whose class includes hazardous commodities, including class A and B explosives, and the imposition of limited terms of grants of authority where the carrier is transporting certain hazardous commodities.<sup>30</sup>

The duty imposed on motor common carriers of property to provide transportation coextensive with all points and services contained in their certificates is being examined.<sup>31</sup> The Commission is attempting to reconcile the new policy favoring broader grants of authority with a common carrier's duty to provide the service it says it will. Under the Motor Carrier Act of 1980, a certificate may no longer be a proper measure of the extent to which a carrier must hold its services out to the public. Alternative means for measuring

<sup>25</sup> Ex Parte No. MC-122 (Sub No. 1), *Implementation of Intercorporate Hauling Reform Legislation*, (not printed), decided December 19, 1980.

<sup>26</sup> Ex Parte No. 55 (Sub No. 45), *Appellate Procedures*, 132 M.C.C. 539 (1981).

<sup>27</sup> Ex Parte No. MC-67 (Sub No. 8), *Rules Governing Temporary Authority and Emergency Temporary Authority*.

<sup>28</sup> Ex Parte No. MC-67 (Sub No. 6), *Elimination of Notification Procedure in the Processing of Emergency Temporary Authority Applications under 49 U.S.C. Section 10928*.

<sup>29</sup> MC-C-10799, *Petition for Declaratory Order—Transportation of Hazardous Wastes*.

<sup>30</sup> Ex Parte No. 55 (Sub No. 43B), *Acceptable Forms of Requests for Operating Authority—Classes A and B Explosives and Other Hazardous Commodities*.

<sup>31</sup> Ex Parte No. MC-77 (Sub No. 3), *Elimination of Certificates as the Measure of "Holding Out"*.



the extent of the common carrier obligation were suggested. Oral argument was held to supplement the record.

### Household Goods

On October 15, 1980, the Household Goods Transportation Act of 1980 was enacted into law. Passage of this legislation signaled an historic departure from the traditional scheme of regulation in the moving industry. The Act provides for maximum carrier flexibility to price their services to serve best the needs of shippers of household goods and allows for a variety of quality and price options to meet market demands. A primary goal of the legislation is increased consumer protection, which is accomplished through dissemination of accurate and complete information about carrier performance and individual shippers' rights and remedies. Remedies for violations of ICC regulations necessary for protection of individual shippers are strengthened. Under the Act, the appropriate authorizing committees of Congress are to conduct periodic oversight hearings on the effects of this legislation to ensure that the Act is being implemented in accord with Congressional intent.

Following enactment of the Act, the Commission appointed an internal task force to analyze and implement the new legislation. After identifying ten key areas affected by the Act (standard rate levels, zone of rate reasonableness, entry appli-

cation procedures, fitness criteria, public convenience and necessity determination, agency procedures, operational rules and regulations, dispute resolution, compliance and enforcement, and anti-competitive practices), the task force identified 27 separate tasks for the Commission to accomplish. The tasks ranged from internal changes to streamline paper handling to a complete re-vamping of operational rules applicable to household goods carriers.

Shortly after the Act became law, the Commission proposed new operational rules for movers. After considering the numerous public comments received, the ICC adopted final rules<sup>22</sup> that were scheduled to go into effect June 9, 1981. These rules were designed to reduce unnecessary paperwork burdens, encourage rate and service options, and eliminate regulation to the maximum extent feasible consistent with requirements of the statute and assuring continuous protection of individual shippers. Petitions for judicial review<sup>23</sup> of the Commission's final rules were filed in the United States court of Appeals for the Seventh Circuit and, on petitioners' request, the Court stayed the rules presented to the Court on September 23, 1981. A subsequent petition to vacate the stay was denied by the Court on September 25, 1981. These cases remained pending before the Court at the close of the fiscal year.

The Household Goods Transportation Act of 1980 conferred on carriers the right to offer shippers various price/serv-

<sup>22</sup> Ex Parte No. MC-19 (Sub No. 36), *Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)*, 132 M.C.C. 599 (1981)

<sup>23</sup> *North American Van Lines, Inc., et al. v. U.S. and I.C.C.*, Civ. No. 81-1724 (7th Cir., filed May 7, 1981) and *American Red Ball Transit Co., et al. v. U.S. and I.C.C.*, Civ. No. 81-1726 (7th Cir., filed May 7, 1981).



ice options such as binding estimates and guaranteed service. The Commission's household goods operational rules, adopted prior to the passage of the Act, remained in effect pending the adoption of new rules and reflected prior law which prohibited charges based on other than weight. A carrier-filled petition sought relief from the Commission's existing rules concerning weighing for the purpose of offering binding estimates under the Act. The petition was dismissed by the Commission on the basis that the statute superseded prior rules to the extent of any conflict.<sup>44</sup>

As the year progressed, carriers began to experiment with different price/service options and to compete with one another in the various offerings under particular options. For example, binding estimate offers with final charges based on the quoted price were met by some carriers' with offers that final charges would be based on the estimate or the actual weight, whichever is lower. Guaranteed service with penalties for each day delivery is delayed was offered by some movers, while others indicated that claims for additional expenses would be considered over and above the specified late penalty. Numerous and varied "replacement" or "full" value protection plans were offered to shippers in which carriers guaranteed replacement of articles lost or damaged while in the carrier's custody and/or reimbursement for full replacement cost, with no deduction for depreciation. Volume discount plans appeared, offering commercial shippers percentage reductions based on volume of traffic tendered or line haul revenues generated.

At the time the final operational rules were issued, a Notice of Proposed Rule-making<sup>45</sup> was served in which the Commission sought public comment on household goods carrier performance standards. Standards were proposed in the critical areas of estimating, transportation of shipments with reasonable dispatch and timely claims handling. Public comment was under review as the fiscal year closed.

A final policy statement<sup>46</sup> was issued on claims dispute resolution programs which movers may establish with Commission approval under the Act. The Commission declined to adopt specific regulations in the interests of fostering carrier flexibility and variety in the types of plans offered and to encourage carriers to establish and participate in dispute settlement plans. Instead, the specific elements required to be met by statute<sup>47</sup> prior to Commission approval of such plans were reiterated and authority delegated to the Commission's Insurance Board to examine each program submitted for approval to assure that it complies with the statutory provisions of the Act. The board approved two programs during FY 1981, one submitted by the American Movers Conference and the other by the Movers and Warehousemen's Association. The membership of these two associations exceeds 1000 carriers.

A consumer advisory was published containing complaint and performance

<sup>44</sup> Ex Parte No. MC-19 (Sub No. 38), *Bekins Van Lines, Co., Petition for Relief from Household Goods Regulations and from Released Rates Order MC-505*, (not printed), decided January 12, 1981.

<sup>45</sup> Ex Parte No. MC-19 (Sub No. 36A), *Practices of Motor Common Carriers of Household Goods (Performance Standards)*, (not printed), decided February 27, 1981.

<sup>46</sup> Ex Parte No. MC-19 (Sub No. 37), *Claims Dispute Settlement Programs for Household Goods Carriers*, 132 M.C.C. 563 (1981)

<sup>47</sup> 49 U.S.C. 11711(b).

data for 13 nationwide movers that handled 1000 or more C.O.D. shipments during 1980. These carriers transported 79 percent of the 1,082,355 interstate shipments moved by the industry during the year. Only 1.7 percent of the total number of shipments resulted in complaints and not all complaints constituted violations of Commission regulations.

### **The Minority Trucker**

The minority trucker, his problems and practices, was the subject of a series of hearings in 1981. The hearings, held in several major cities and chaired by Commissioners Marcus Alexis and Reginald E. Gilliam, were used as a sounding board by truckers to air their grievances and present practical strategies for alleviating the problems that affect the industry.

Among the issues discussed were the lack of minority transportation professionals in the industry, shipper support, lack of insurance coverage available to minority carriers, the lack of government traffic available, operations financing, and emergency temporary authority and temporary authority.

Out of these hearings several important steps have been initiated. First, a dialogue between minority truckers and the Commission has begun. With the assistance of the ICC's Small Business Assistance Office, the Commission has increased the amount of information available to any minority business operator who seeks to enter the transportation industry. In addition, the hearings have provided the impetus for the creation of a pilot legal internship program

at the ICC. The Commission, in cooperation with the Howard University School of Law, will place law students within the various divisions of the Commission for practical training in the regulation of the industry. Finally, the hearings led to the unanimous adoption of an ICC report entitled, *Report On Minority Participation in the Surface Transportation Industry*. The report, which was published in July, documented the hearings and recommended a strong Commission effort to encourage minority participation in the industry.

### **The Independent Trucker**

The independent trucker is an essential part of America's motor carrier transportation system. In recent years the Commission has become increasingly aware of the vital role of independent owner-operator truckers and more sensitive to their concerns. Today open lines of communication are maintained between the Commission and numerous independent truckers and their associations.

The Commission initiated several rulemaking proceedings designed to assist the independent trucker. The Motor Carrier Act of 1980 directed the Commission to allow owner-operators to obtain operating authority to transport food and other edible products in an amount not to exceed the annual tonnage of commodities transported which are exempt from economic regulation. In final rules implementing these provisions, the Commission said owner-operators seeking this authority need only prove that they are fit, willing and able to perform the proposed service.<sup>28</sup> This is a lesser

<sup>28</sup> Ex Parte No. MC-140, *Owner-Operator Food Transportation*, 132 M.C.C. 521 (1981)

burden of proof than is imposed on applicants generally. A reduced filing fee was established.

In addition, these rules provide for an annual, postcard certification of compliance report, a simplified one-page minimum rate filing procedure and a reduced filing fee of \$150. Owner-operators who desire regular motor carrier operating authority will benefit from the Commission's implementation of Section 5 of the Act. The final rules governing applications for operating authority substantially change past motor carrier entry policy by creating a presumption that a proposed service is in the public interest.<sup>39</sup> This presumption will benefit owner-operators who want to obtain operating authority in their own name.

The Act further directed that the Commission, in consultation with the Secretaries of Transportation, Labor and Agriculture, study loading and unloading practices. Notice of institution of the study was served on the public and comments were under consideration at the close of the year.<sup>40</sup> A report was scheduled to be submitted to Congress by December 31, 1981.

The Commission issued a rulemaking which proposes to modify its leasing rules to require that written contracts specify who is responsible for loading and unloading the property transported.<sup>41</sup> The amount of compensation for loading and unloading, if any, would also be set out in the lease.

To clarify and close loopholes in the Commission's existing leasing rules, a no-

tice of proposed rulemaking was instituted.<sup>42</sup> In this proceeding the Commission proposed to (1) require that carriers specifically perform lease provisions, (2) specify that payment to owner-operators for trip leases be made by the permanent lease carrier, (3) limit the paperwork that carriers may require prior to payment to owner-operators, (4) require carriers to furnish owner-operators with rated freight bills in all instances, regardless of the method of compensation, (5) require carriers to pay fines for overweight and oversize trailers in certain instances, (6) require carriers to give refunds for returned base plates, and (7) require carriers to specify the amount of charge-back items and require refunds with interest on excessive deductions. The proceeding was pending at the close of FY 1981.

In 1979 the Commission instituted a fuel surcharge program to require authorized trucking companies who use owner-operators to pass on to their owner-operators a designated percentage of gross revenue to compensate them for the increased cost of fuel. This action was taken as an emergency measure to ease the owner-operator cost-revenue squeeze which led to a June 1979 shutdown by independent truckers. Perhaps the most far reaching ICC owner-operator initiative during FY 1981 was the Commission's modification of the fuel surcharge program. (See section on Rates in chapter in Trucking Companies.)

<sup>39</sup> Ex Parte No. 55 (Sub No. 43), *Rules Governing Applications for Operating Authority*, 364 I.C.C. 508 (1980).

<sup>40</sup> Ex Parte No. 410, *Loading and Unloading Study*, (not printed), decided June 5, 1981.

<sup>41</sup> Ex Parte No. 43 (Sub No. 11), *Lease and Interchange of Vehicles*, (not printed), decided October 16, 1980.

<sup>42</sup> Ex Parte No. 43 (Sub No. 13), *Lease and Interchange of Vehicles (Rule Modifications)* (not printed), decided August 24, 1981.

The Commission also proposed a policy statement which reexamines the restrictions prohibiting owner-operators and others who do not hold ICC authority from leasing their equipment with drivers directly to private carriers.<sup>43</sup> The proceeding is an outgrowth of changes brought about by the Motor Carrier Act of 1980, particularly the increased flexibility accorded private carriers under Section 9 of the Act. This proceeding was pending at the close of the fiscal year.

An extensive training program for owner-operators was undertaken during the fiscal year as a series of conferences were conducted by the ICC, the Small Business Administration, and the Department of Transportation throughout the country. The meetings attracted nearly 2000 participants. These conferences represented the pilot project of a projected two year training project. The Commission's portion encompassed instruction on areas of ICC responsibility, the application process, and leasing rules.

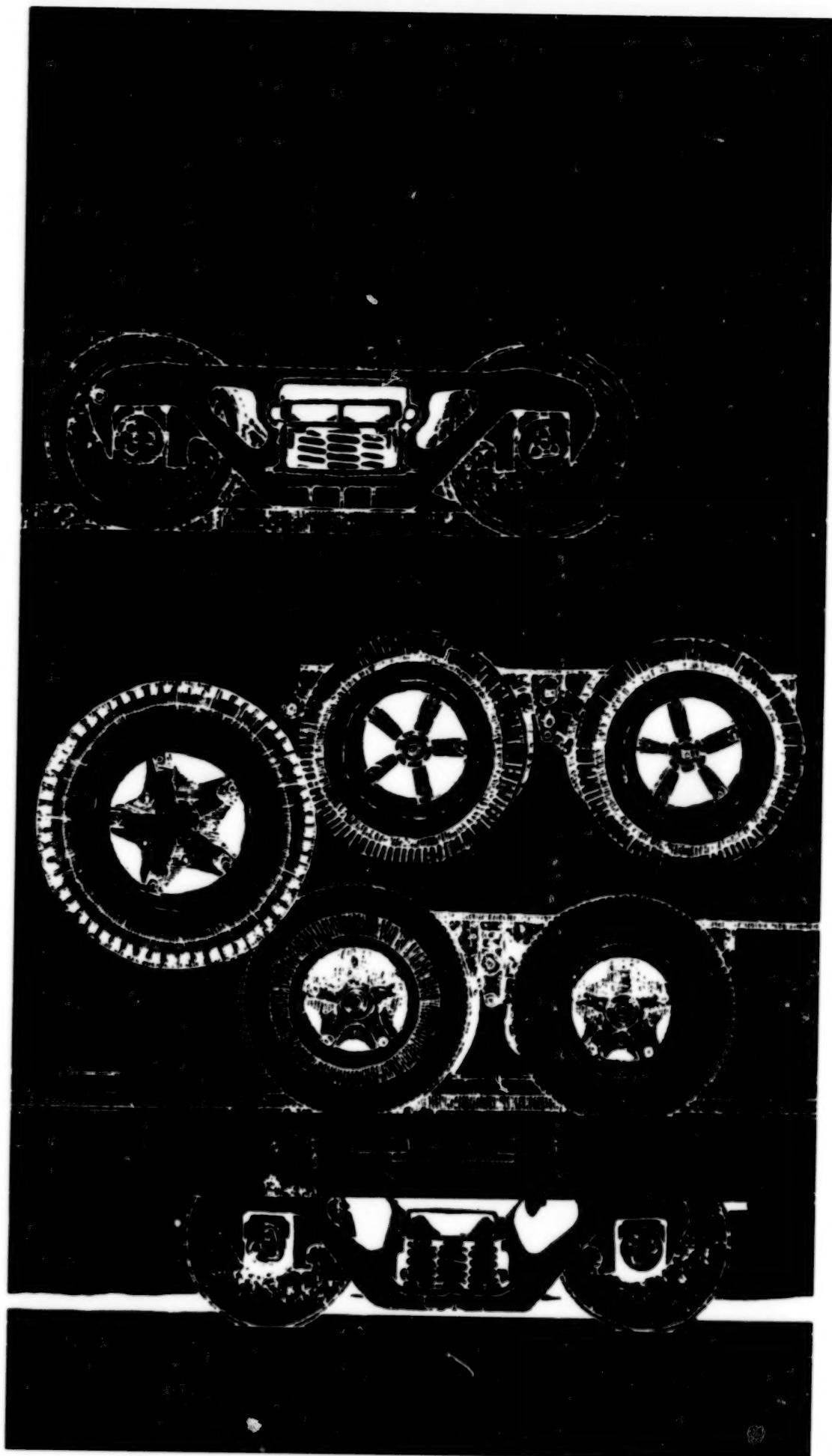
In addition, a 180-page workshop manual was prepared specifically for this project and provided to all participants to be used as a future resource tool. Analyses of the pilot series indicated that the program concept works. Plans were under way for a second phase to begin in FY 1982.

The establishment of open lines of communication between the Commission and owner-operators and owner-operator organizations has been a key element in improving cooperation in this area of government activity. A computerized list of owner-operator associations and periodicals is maintained by the ICC's Small Business Assistance Office to assure dissemination of pertinent information. Persons and organizations included on this list are forwarded copies of all Commission decisions and rulemakings that affect independent truckers and are invited to participate in the Commission's decisionmaking process. Informal outreach efforts also have been enhanced through participation in a road check program conducted by the Department of Transportation. Commission personnel furnish owner-operators with literature, answer questions and provide assistance that encompasses informal resolution of disputes with carriers.

<sup>43</sup> Ex Parte No. MC-122 (Sub No. 2), *Lease of Equipment and Drivers to Private Carriers*, 132 M.C.C. 351 (1980).

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## BUS COMPANIES

### General Financial Condition

Overall industry financial performance during the first nine months of fiscal year 1981 indicated a movement away from the improved performance begun during the second calendar quarter of 1979. The change was reflected by industry data showing a decline in return on equity and an increase in the operating ratio for Class I carriers. Ridership data for the same period showed an increase of approximately .5 percent in the number of passengers. However, ridership declined almost five percent for the Class I carriers during the third quarter of fiscal year 1981. The decline continued into the quarter ending September 30, 1981. The increase in ridership levels achieved in calendar years 1979 and 1980 appeared to have stopped in 1981. The decade-long decline in ridership that began in 1970 appears to be broken only by periods when fuel shortages and spiraling fuel prices increase the demand for bus travel.

Preliminary industry data for calendar year 1980 for combined Class I, II and III carriers of passengers indicates that operating revenues for all 1330 carriers and services increased by 17.6 percent from the 1979 base and overall operating ratios improved from 94.6 percent to 93.1 percent. Class I revenues for all 46 carriers increased by approximately 15.7 percent, including increases of 18.6 percent for intercity regular route service, 12.2 percent for charter and special service, and 7.2 percent for package express services. Ridership increased only slightly. The improved financial performance of the industry during calendar year

1980 over 1979 resulted primarily from higher fares and express rates approved by the Commission to help offset the impact of inflation.

ICC data for the ten largest carriers shows that for the 12 months ending June 30, 1981, the number of revenue passengers increased by .7 percent, operating ratios rose from 94.6 percent to 96.2 percent, while return on equity improved slightly from 11.6 percent to 11.7 percent.

### Rates

In the first proceeding of its kind, the Commission denied a request for exemption from various rate, service, and insurance regulations filed by New Jersey Transit Corporation, Transport of New Jersey and Maplewood Equipment Company.<sup>1</sup> This provision of law, which was added to the Interstate Commerce Act by an amendment to the Urban Mass Transportation Act of 1964, requires that an exemption be granted unless the Commission finds that the public interest would not be served by the exemption, that the exemption would result in a undue burden on interstate or foreign commerce, or that the mass transportation service, including rates, proposed to be exempt is not subject to regulation by any state or local public body. The Commission found that the requested exemption met none of the criteria for approval.

The Commission also considered a complaint filed by Greyhound Lines, Inc. which alleged that Amtrak's fare policy constituted an unfair or predatory practice.<sup>2</sup> The Commission found that Grey-

<sup>1</sup> No. 38622, *Petition of New Jersey Transit Corporation to Exempt Mass Transportation Services* (not printed), decided September 30, 1981.

<sup>2</sup> No. 37285F, *Greyhound Lines, Inc. v. National Railroad Passenger Corporation* (not printed), decided October 16, 1981.

hound failed to prove that Amtrak's pricing of these services is unlawful under the Interstate Commerce Act.

The Commission is considering whether to allow bus companies to raise and lower fares within a fixed zone and to negotiate charter charges in order to recover increasing costs.<sup>3</sup> That proceeding has been held in abeyance as Congress considers bus legislation.

### Operating Rights

The Commission has been deeply concerned with the fitness of companies applying for authority to transport passengers, particularly as it affects the safety of operations. In one case, evidence was presented that the applicant's operations under temporary authority were conducted in a manner which violated the Department of Transportation's hours-of-service regulations for drivers.<sup>4</sup> The Commission concluded that the most appropriate remedy in this case would be to limit the grant of authority to a term of 18 months. This would allow the Commission an opportunity to monitor the applicant's operations and ensure further review before permanent operating authority would be issued.

Passenger brokers have been active in developing and promoting bus tours during the past several years. Many brokers have found this kind of service to be popular with their customers, leading it to become perhaps the most dynamic aspect of the motor bus industry today. In order to assure the availability of the best possible equipment, a number of the larger brokers supported the appli-

cations of various carriers for relatively broad regional operating rights. In this way, they will have available a reliable and consistent source of equipment for their tour programs. The Commission affirmed that a broker is a proper supporting witness for such an application, even when the carrier is affiliated with the broker.<sup>5</sup>

### Service

The Commission proposed regulations which would define the groups of articles that bus companies may refuse to transport in checked baggage and for which bus lines may limit or disclaim liability for loss or damage.<sup>6</sup> The regulations are necessary to clarify exactly how bus lines may limit their liability and what articles they may lawfully refuse to carry. The Commission also adopted regulations requiring bus lines to provide excess value insurance coverage up to at least \$1000 on checked baggage at extra charge to the passenger if a bus line limits its liability for loss or damage to checked baggage.<sup>7</sup>

A significant number of the bus-related complaints received by the ICC concern claim processing and settlement offers for lost or damaged baggage and express shipments. Other areas involve overcharging on fares, failure to provide on-time service, unsatisfactory equipment and miscellaneous service complaints. Unauthorized operations complaints are also received.

<sup>3</sup> Ex Parte No. MC-125, *Fare Flexibility for the Bus Industry* (not printed), notice decided June 25, 1979.

<sup>4</sup> *Latin Express Service, Inc., Com. Car. Applic.*, 132 M.C.C. 289 (1980).

<sup>5</sup> *Paragon Transportation Co., Inc.*, 132 M.C.C. 568 (1981).

<sup>6</sup> Ex Parte No. MC-95 (Sub No. 1), *Practices of Motor Common Carriers of Passengers—Checked Baggage Prohibitions and Liability Exemption* (not printed), notice decided April 9, 1981.

<sup>7</sup> *Practices of Motor Common Carriers of Passengers—Checked Baggage Liability Provisions*, 132 M.C.C. 560 (1981).

## FREIGHT FORWARDERS

The Motor Carrier Act of 1980 permits freight forwarders to enter into contracts with railroads and water common carriers, and to use the services of motor contract carriers in addition to the motor common carrier service they previously could use. The Commission interpreted "contracts" in this context to mean joint rates and through routes, and has modified its regulations to facilitate these arrangements.<sup>1</sup>

The Commission also reconsidered its policy proscribing rail, motor or water carriers from entering into international joint rates and through routes with non-vessel operating common carriers (NVO's) and authorized these arrangements.<sup>2</sup> Proscription was necessary when freight forwarders could not enter into

contracts because freight forwarders and NVO's otherwise would not have been competing on an equal basis. The new regulations permit competition between freight forwarders and NVO's in the area of international joint rates and through routes and should result in improved service for small shippers.

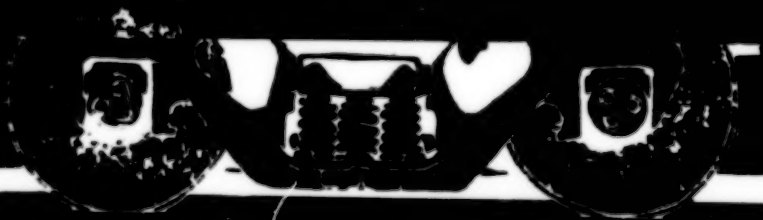
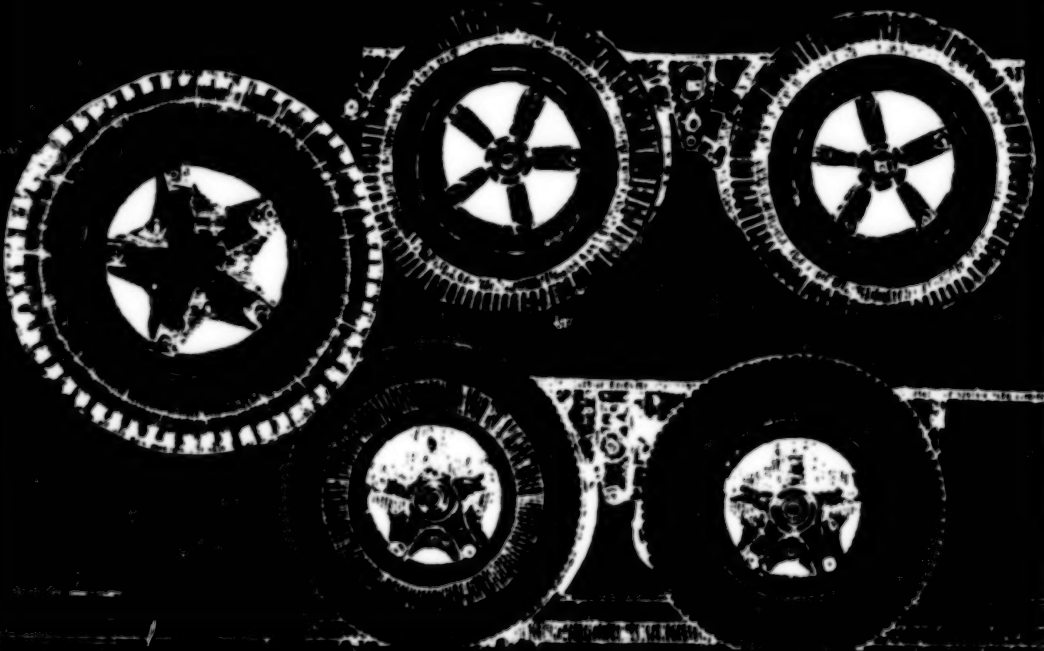
The Commission found that a freight forwarder may establish an independently operated affiliate which may legally provide service exempt from economic regulation<sup>3</sup> by acting as a shippers' agent performing consolidation and distribution services when the service is provided and performed only within a terminal area.<sup>4</sup>

<sup>1</sup> *Freight Forwarder Contract Rates—Imp. of P.L. 96-296*, 364 I.C.C. 413 (1980).

<sup>2</sup> *Joint Rates & Through Routes Frt. Forwarders & NVO*, 365 I.C.C. 136 (1981).

<sup>3</sup> 49 U.S.C. 10562(4).

<sup>4</sup> *Status of Carrier—Affiliated Shippers' Agents*, 365 I.C.C. 32 (1981).





## WATER CARRIERS

Only a small percentage of domestic water traffic is subject to regulation by the Commission. Between 1978 and 1979, class A and B water carriers experienced a 7.8 percent increase in freight revenue despite a 16.6 percent drop in tonnage. Net income of class A carriers reporting showed resilience, increasing five percent. The number of class A carriers reporting rose from 52 to 54. Iron ore, iron and steel, chemicals and related products are the leading commodities of regulated inland waterway traffic, while petroleum products, coal, and coke lead in the unregulated portion.

### Rates

Although relatively few ICC proceedings affect only water carriers, a number of proceedings cut across all modes, including water carriers. Water carriers now are permitted to enter into contracts with freight forwarders,<sup>1</sup> and to establish international joint rates and through routes with nonvessel operating water common carriers.<sup>2</sup> The Commission is also considering changes in the credit regulations for all modes, including water carriers.<sup>3</sup> In a decision affecting only water carriers, the Commission approved in part a general increase in rates and charges.<sup>4</sup>

### Operating Rights

The Commission has noted the importance of increased competition not only among water carriers but also among water carriers and other modes of transportation. During the fiscal year the Commission finalized new rules governing applications for operating authority in order to speed up the administrative process.<sup>5</sup> Issuance of the new rules was part of the process of regulatory reform mandated by the Motor Carrier Act of 1980.

The Commission authorized one applicant to operate as a common carrier by non-self-propelled vessels with the use of separate towing vessels in the transportation of general commodities and by towing vessels in the performance of general towage between ports and points along the Atlantic Coast and tributary waterways (excluding the Mississippi River above Baton Rouge, LA, and the Alabama River above Mobile, AL), and the Pacific Coast and tributary waterways.<sup>6</sup> The Commission authorized a second applicant to operate as a common carrier by non-self-propelled vessels with the use

<sup>1</sup> *Freight Forwarder Contract Rates—Imp. of P.L. 96-296, 364 I.C.C. 413 (1980).*

<sup>2</sup> *Joint Rates & Through Routes Frt. Forwarders & NVQ, 365 I.C.C. 136 (1981).*

<sup>3</sup> *Ex Parte No. MC-1, Payment of Rates and Charges of Motor Carriers; Ex Parte No. 73, Regulations for Payments of Rates and Charges; Ex Parte No. 143, Rules and Regulations Governing the Settlement of Rates and Charges of Common Carriers of Property by Water* (not printed), notice decided April 30, 1981.

<sup>4</sup> *No. 37574, Increased Rates and Charges, Waterways Freight Bureau, December 1980* (not printed), decided October 1, 1981.

<sup>5</sup> *Rules Governing Applications for Operating Authority, 45 Fed. Reg. 86771, 86789-86796* (Dec. 31, 1980).

<sup>6</sup> *No. W-81 (Sub-No.5), McAllister Lighterage Line, Inc., Extension—Three Coasts* (not printed), decided May 28, 1981.

of separate towing vessels and by towing vessels in the performance of general towage transporting general commodities (except classes A and B explosives) between ports on the Pacific coast and its tributary waterways, the Gulf of Mexico Coast, and the Atlantic Coast.<sup>7</sup> The Commission authorized a third applicant to operate by non-self-propelled vessels with the use of separate towing vessels in the transportation of general commodities and by towing vessels in the performance of general towage between ports and points on the Arkansas River and its tributaries and on the Mississippi River between Rosedale, MS, and New Orleans, LA.<sup>8</sup> The Commission's actions in these three instances were predicted

largely upon the importance of competition in the transportation industry.

In another significant action, the Commission exempted a regulated common carrier of passengers from statutory provisions in order to allow the carrier to offer free or reduced-rate transportation to travel agents and tour guides.<sup>9</sup> The Commission based its decision upon the fact that the carrier, Delta Queen Steamboat Company, is a unique historic entity in the transportation industry; that the preservation of its operations is both desirable and in the public interest; and that the carrier's past inability to provide free or reduced rate transportation offered by its foreign competitors had placed it at a serious competitive disadvantage, thus creating sufficient justification for the exemption.

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<sup>7</sup> No. W-409 (Sub-No. 5), *Shaver Transportation Company, Extension—Three Coasts* (not printed), decided August 20, 1981.

<sup>8</sup> No. W-1333, *Conagra Transportation, Inc., Water Carrier Application* (not printed), decided September 3, 1981.

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<sup>9</sup> No. WC-34, *Delta Queen Steamboat Company—Petition for Exemptive Relief* (not printed), decided February 24, 1981.

## INTERMODAL TRANSPORTATION

The Commission has continued to adhere to its policy of promoting coordination and fostering the growth of efficient and economic intermodal transportation services.<sup>1</sup> Rail-motor intermodalism was fostered by the Commission's adoption of interim rules<sup>2</sup> to permit a rail affiliate to provide motor transportation prior or subsequent to rail transportation to meet the needs of inadequately served shippers located on a rail line of another carrier.

The Commission also implemented sections of the Motor Carrier Act of 1980 which permit freight forwarders to enter into contracts with railroads and water common carriers, and to use the services of motor contract carriers.<sup>3</sup> Additionally,

the Commission authorized rail, motor and water carriers to enter into international joint rates and through routes with nonvessel operating water common carriers.<sup>4</sup> In other significant decisions, the Commission exempted from regulation rail and truck service provided by rail carriers in connection with trailer-on-flatcar and container-on-flatcar service<sup>5</sup> and has proposed an expansion of this exemption to include truck service provided by railroad affiliated motor carriers and other motor carriers so that the TOFC/COFC movements are not at a competitive disadvantage.<sup>6</sup>

<sup>1</sup> See *Emery Air Freight Corp. Freight Forwarder Appeal*, 339 I.C.C. 17, 27-37 (1971), *IML Freight, Inc., Ext.—Containerized Freight*, 118 M.C.C. 31, 32 (1973), and *Holt Motor Express, Inc., Ext.—Baltimore, MD*, 120 M.C.C. 323, 329-330 (1974).

<sup>2</sup> Ex Parte No. 282 (Sub-No. 7), *Special Intermodal Authority*, 364 I.C.C. 342 (1980).

<sup>3</sup> Ex Parte No. 364 (Sub-No. 1), *Freight Forwarder Contract Rates—Imp. of P.L. 96-296*, 364 I.C.C. 413 (1980).

<sup>4</sup> Ex Parte No. 261 (Sub-No. 1), *Joint Rates & Through Routes Frt. Forwarder & NVO*, 365 I.C.C. 136 (1981).

<sup>5</sup> *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 391 (1980), 364 I.C.C. 731 (1981).

<sup>6</sup> Ex Parte No. 230 (Sub-No. 6), *Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)* (not printed), notice decided February 19, 1981.

## TARIFFS

The number of tariffs filed in fiscal year 1981 increased by 40,711 over 1980. This reflects the expansion of independent action taken by individual carriers. The economy and the competitive initiatives encouraged by the 1980 changes in the Interstate Commerce Act resulted in many innovative tariff proposals.

To encourage more effective use of equipment, numerous motor carriers introduced discount rates. Shippers who were able to consolidate shipments for tender to the carrier at one time were offered reduced rates. Discounts of up to 50 percent of the standard rates have been offered. Widespread use of such discounts has resulted in much lower costs to the ultimate consumer.

In one significant decision, the Commission said that discounts had much to offer in reducing overall carrier costs, fuel consumption and ultimately, charges to shippers, and were in accord with provisions of the Motor Carrier Act of 1980 to encourage price flexibility.<sup>1</sup>

Many proposed tariff provisions required relief from tariff publishing rules. The ICC's Special Permission Board facilitated the issuance of such tariffs through special tariff authorities but also insured that the provisions were made available to all who could use them, protecting the interests of all shippers.

Handling the large increase in applications filed by carriers proposing innovative tariffs kept the Special Permission Board active. Requests to the board increased by 44 percent, from 5854 in fiscal 1980 to 8357 in fiscal 1981. The number would have been much greater

had the Board not issued special tariff authorities on its own in anticipation of carrier needs. Many board actions effected savings to the carriers by reducing the number of tariff publications needed to accomplish changes. These economies reduced carrier costs and resulted in lower rates to shippers. These broad grants saved the filing of over 5000 applications. Approximately \$100,000 in filing fees alone, plus the administrative time of the applicants and the Commission was saved. One example permitted a simplified method of publishing motor carrier discount rates, reducing by 400 the number of applications that otherwise would have been filed.<sup>2</sup>

Other decisions were designed to reduce the number of tariff pages required to be filed. In one case, the board simplified methods of reference to rail surcharge tariffs authorized by Section 217 of the Staggers Rail Act.<sup>3</sup>

The board issued additional authorities aimed at improving tariff publication procedures. Carriers were permitted to file tariffs via a receiving microcomputer terminal installed in the ICC building.<sup>4</sup> This will improve efficiency by reducing deficient tariff filing caused by typographical errors and eliminate problems caused by delays under conventional delivery systems.

Rates of a motor common carrier based on specifying a named shipper can be discriminatory. Several motor common carriers filed tariffs that would have provided discount rates only for the account of named shippers; 53 of these applications were denied.

The Motor Carrier Act of 1980 liberal-

<sup>1</sup> Docket No. 37581, *Central States Motor Freight, Inc.—Petition for Declaratory Order Procedures Governing the Processing of Overcharge Claims*.

<sup>2</sup> Special Tariff Authority No. 81-7553-S, Discount Tariff—Rule Relief.

<sup>3</sup> Special Tariff Authority No. 81-4908—Reference to Surcharge Tariffs.

<sup>4</sup> Special Tariff Authority No. 82-0585—Electronic Transmission of Tariffs, served October 23, 1981.

ized motor carrier entry policy. Many newly franchised carriers required extensive help in meeting tariff publishing requirements of the Act. Several hundred simplified tariff instructional manuals were furnished to the new operators, enabling them to begin functioning quickly. Additionally, tariff publishing rules were amended to permit owner-operators transporting food products to file tariffs in a plain letter form.<sup>8</sup>

Motor carriers quickly introduced new rates encouraged by the Household Goods Transportation Act of 1980. Under guaranteed service, most carriers authorized to handle goods offer cash reimbursement to shippers for each day pickup or delivery is delayed. Also, rates and charges were established based on a written binding estimate by the carrier. Moreover, the flexibility advocated by the Act inspired carriers to propose more innovative tariffs. Shipments of household goods normally move at rates subject to a release valuation. A number of moving companies publish replacement value protection rules that reimburse shippers for the full market replacement value of goods lost or damaged in transit.

A move that gained favor with the public was the merging of the public tariff file with the official tariff file. In compliance with the Commission's FY 1980 budget, the public tariff file, long maintained by Commission personnel in the ICC building, was moved away from the building and maintained by a private contractor. A study during 1981 indicated the public file could be merged with the official file in the ICC building, thus eliminating the need and cost of the private contractor. Service to public users of the tariff file continues at the same level and users have the added convenience of

access to other reference facilities maintained in the ICC building.

To achieve better use of the agency's space, files containing carrier concurrences, powers of attorney and revocations were placed on microfiche. In addition to reducing space requirements by 700 square feet, the process permits quicker filing and retrieval of information. This provides an instant response to inquiries for data.

### **Informal Rate Cases**

The Section of Rates and Informal Cases in the Commission's Bureau of Traffic used its informal procedures to settle 4120 cases concerning disputes over rate and tariff matters during the last fiscal year. This simple and inexpensive process prevented most of these disputes from ending up on the Commission's formal docket, a time consuming, complicated and expensive procedure.

Every person or group, from large corporations to small consumers, has access to this service and receives expert help from experienced personnel. A further public gain from informal handling is dissemination of knowledge of the law, the workings of tariffs and the rights of parties in order to prevent similar disputes in the future.

The Commission's special docket procedure authorizes rail and water common carriers to refund or waive collection of unreasonable charges. In fiscal year 1981, a total of 477 special docket orders were served, authorizing total reparation or waiver of \$28,787,587. The largest single adjustment was \$13,879,310. The largest single refund amounted to \$660,633.

<sup>8</sup> Ex Parte No. MC-143, *Owner-Operator Food Transportation*, 132 M.C.C. 521 (1981).



Through the informal complaint docket, rail or water shippers may prevent expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaint. If the carrier agrees that a shipment involves overcharges or that the charges are unreasonable, then refunds or waiver of undercharges can be made without using time consuming and costly formal procedures. The Commission processed 126 applications on the informal complaint docket during the fiscal year.

Motor common carriers acting with one or more other carriers, household goods carriers and freight forwarders are required to seek authority from the Commission prior to the publication of released rates. Released rates are a reduced charge based upon a limitation of the carrier's liability for the shipper's property. During fiscal year 1981, the Commission's Released Rates Board acted on seven applications for such authority.

Prior to the Motor Carrier Act of 1980 and the Staggers Rail Act, all classes of carriers required Commission approval before the publication of released rates. Both pieces of legislation, however, significantly reduced the need for such approval and only the classes of carriers stated above still require prior Commission action. As a result, the number of applications to the Released Rates Board declined during the fiscal year.

## Tariff Reform

Drawing on its knowledge of the kinds of problems which reoccur within the industry in tariff disputes, the Commission continued its efforts to simplify and streamline tariffs and procedures and to introduce innovative and forward-looking reforms.

Representative of the projects developed during fiscal 1981 are several that indicate the direction of the Commission's efforts.

In one major proceeding,<sup>6</sup> the Commission relaxed its regulations in order to permit rates and charges to be named as a percentage of other stated rates and charges. Not only will this greatly facilitate pricing flexibility and innovation, but it also will serve to substantially reduce the cost of tariffs both to the industry and its users. In addition, the percentage method of rate publication will significantly enhance the use of computer technology between carriers and shippers. Another feature of that proceeding allowing the use of computer technology was adoption of standard tariff codes for commodity and place identification. Standardization of these codes will foster computerization of tariff data.

In another rulemaking proceeding,<sup>7</sup> the Commission sought to relax a requirement that railroads seek prior approval of rates that would contravene the long-and-short-haul and aggregate-of-intermediate provisions of the Interstate Commerce Act. At present, railroads are required to submit a detailed application in addition to the actual filing of all such rates. The rulemaking would eliminate the approval stage for many routine rate actions and thereby substantially reduce the paperwork burden on carriers.

In addition, the Commission initiated a rulemaking<sup>8</sup> which dramatically simplified the process of publishing released rates by the railroads, in accord

<sup>6</sup> Ex Parte No. 370, *Tariff Improvement*.

<sup>7</sup> Ex Parte No. 346 (Sub No. 3), *Rail General Exemption Authority Long and Short Haul Transportation*.

<sup>8</sup> Ex Parte No. 390, *Released Rates*.

with the Staggers Rail Act. This action further unburdens the railroads from seeking Commission approval prior to rate publication.

The Commission also proposed new rules<sup>9</sup> to streamline the special docket procedure by simplifying the application procedure significantly. This will allow the waiver of small amounts technically payable as a result of suspension of a rail rate that is subsequently found lawful.

### **Suspension Board**

New, increased or reduced rates and charges for the interstate service provided by the Nation's transportation industries are filed with the Commission in tariff form, generally on not less than 30 days notice to the Commission and the public.<sup>10</sup> Upon request by interested parties opposing the proposed tariff changes, the proposals are considered for possible investigation and suspension by the Commission's Suspension Board or by the Commission. Decisions of the board are subject to reconsideration by the Commission.

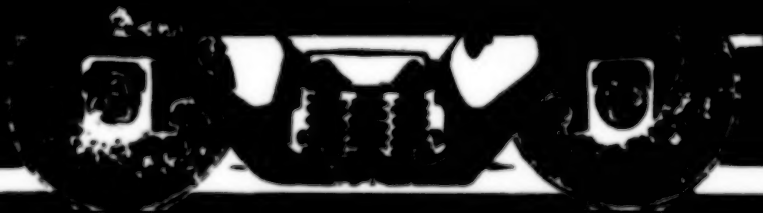
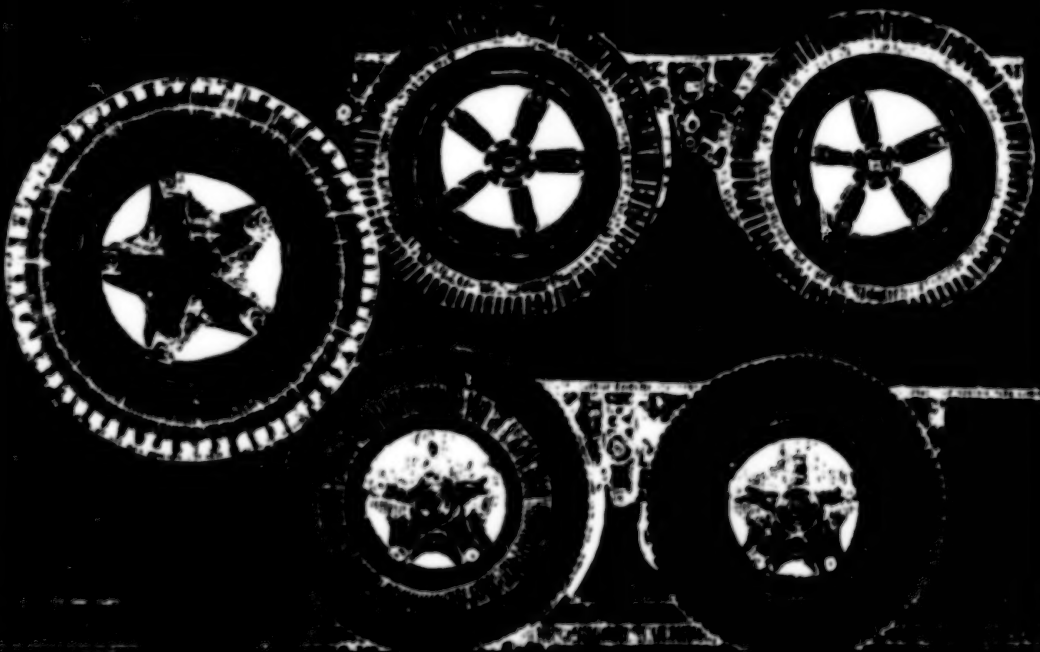
During the fiscal year, a total of 451 rate proposals filed with the Commission were protested. Of these proposals, 103 were suspended, 242 were permitted to become effective, 16 were allowed to go into effect but were investigated, and 90 were either cancelled by the company, the protests were withdrawn, or the tariff was rejected by the Commission.

Considered were approximately 35 general increases in trucking rates and charges filed by the regional motor rate bureaus. In addition, approximately six general increases were filed by the household goods carriers, United Parcel Service and the National Bus Traffic Association.

The Board also considered 84 applications filed by companies to depart from rules which prohibit rail and water companies from charging more for transportation for a shorter distance than for a longer distance over the same route and under the same transportation conditions.

<sup>9</sup> Docket No. 37130, *Special Docket Procedure and Waiver of Insignificant Amounts*.

<sup>10</sup> The Staggers Rail Act of 1980 amended 49 U.S.C. 10762(c)(3) to permit railroads to file new or increased rates on not less than 20 days notice and rate reduction on not less than ten days notice.



## ENFORCEMENT

The Commission's enforcement program involves all areas of surface transportation and includes extensive investigative activities as well as a full range of formal and informal enforcement methods.

### Fraudulent Conduct

The Commission was involved in several significant cases concerning fraudulent conduct. In October and November 1980, Thomas J. Britton, Louis C. Kerns and Thomas D. Moore, Jr. pled guilty to charges of embezzling, abstracting and willfully misapplying monies, property and assets of the Clinchfield Railroad Company. Britton was sentenced to four years in prison and fined \$10,000 with a five year probationary period; Kerns was sentenced to three years in prison and fined \$10,000 with a five year probationary period. Kerns' prison sentence was then reduced to five months and 29 days.<sup>1</sup> Moore was sentenced to five years in prison and fined \$10,000 with a five year probationary period.<sup>2</sup> Moore (an officer of the Clinchfield) and Britton (an employee) also were charged with violating the Clayton Act by directing the Clinchfield to have dealings with Rock Materials, Inc. without using competitive bidding, while Britton and Moore were officers and directors and had a substantial interest in Rock Materials.

In December 1980, in the U.S. District Court for the Eastern District of Virginia, United Coach Companies of Tidewater, Inc. pled nolo contendere to one count of mail fraud and one count of making false

statements to the ICC. United was fined \$1000 for mail fraud and \$10,000 for making false statements.<sup>3</sup>

### Household Goods Transportation Abuse

A number of significant enforcement actions were taken against household goods carriers. Injunctions were obtained against three separate companies operating without authority from Los Angeles to points in Mexico.<sup>4</sup> The three carriers were the subject of many complaints from Mexican-American shippers who had paid freight charges, tendered their property but never had the goods delivered. At least one carrier was being prosecuted by local authorities.

The Commission entered into consent judgments with Atlas Van Lines, Inc.<sup>5</sup> and Aero Mayflower Transit Company, Inc.<sup>6</sup> prohibiting these carriers from violating the ICC's reasonable dispatch regulations which require timely pickup and delivery of household goods.

The Commission ordered Lieberman World Wide Moving Corporation to cease and desist from violating its tariff provisions and the household goods regulations, and from continuing an unreasonable practice.<sup>7</sup> Lieberman was forcing

<sup>1</sup> *U.S. v. United Coach Companies of Tidewater, Inc.*, Criminal No. 80-00108R (E.D. Va., November 26, 1980).

<sup>2</sup> *I.C.C. v. Mundanzas Internacionales Mexicanos, Inc.*, Civil No. 80-4336 (C.D. Cal., May 18, 1981); *I.C.C. v. Julian Quintero d/b/a/Transportas Mexicanos*, Civil No. 80-4334 (C.D. Cal., July 8, 1981); and *I.C.C. v. American International Moving, Inc.*, et al, Civil No. 81-4047 (C.D. Cal., September 23, 1981).

<sup>3</sup> *I.C.C. v. Atlas Van Lines, Inc.*, civil No. EV 79-40-C (S.D. Ind., December 11, 1980).

<sup>4</sup> *I.C.C. v. Aero Mayflower Transit Company, Inc.*, Civil No. 78C 2666 (N.D. Ill., October 8, 1980).

<sup>5</sup> MC-C-10798, *Lieberman World Wide Moving Corporation—Investigation and Revocation of Certificate*, (not printed) decided July 7, 1981.

<sup>1</sup> *U.S. v. Thomas J. Britton and Louis C. Kerns*, Criminal No. 2-80-14 (E.D. Tenn., January 2, 1981).

<sup>2</sup> *U.S. v. Thomas D. Moore, Jr.*, Criminal No. 80-243 (D.S.C., January 8, 1981).

shippers to pay the full transportation charges and refusing to relinquish possession of the shipments upon payment of 110 percent of the estimated charges. This was accomplished in some cases by withholding delivery on items of property in the shipment, such as television sets, until payment was made.

The Commission initiated an injunctive action against Atlas Van Lines, Inc. because Atlas had imposed restrictions on its agents which curtailed their ability to exercise the full independent authority they had received from the Commission. The Commission terminated the action pursuant to an agreement with Atlas to suspend the restrictions and not to take any reprisal against any agent who had complained about the restrictions.<sup>8</sup>

### **Rebates, Concessions and Collection of Freight Charges**

The Commission has been successful in obtaining substantial settlements and favorable judgments for violations of the anti-rebating provisions of the Interstate Commerce Act. On October 8, 1980, AMF, Inc. paid \$82,263 in civil forfeitures for soliciting concessions from the Norfolk and Western Railway Company, in connection with its failure to pay applicable detention charges at an unloading facility at Shelby, Ohio.

On December 30, 1980, Missouri Pacific Railroad Co. paid \$85,000 in civil forfeitures for violations of transit privileges, failing to weigh rail cars and failing to bill demurrage charges in a timely manner.

On December 31, 1980, Southern Pacific Transportation Company paid \$25,000 in civil forfeitures for failure to bill demurrage charges on mini-land bridge shipments at its Houston inter-modal facilities.

A \$40,000 settlement was obtained from the Louisville and Nashville Railroad stemming from incorrect calculation of demurrage charges levied against Star Newspaper of Indiana.

In a significant decision which appears to settle a troublesome area, the Eighth Circuit Court of Appeals, on February 27, 1981, affirmed a lower court ruling that when an exempt shippers association fails to pay freight charges, the members whose freight was shipped are liable for the payment of those charges. The court held that members were responsible even though they had previously paid money to the association to cover the transportation costs. The court stated that with respect to the payment of the freight charges, the association acted as an agent for its members.<sup>9</sup>

### **Owner-Operator Abuses**

The Commission has also been active in protecting the rights of owner-operators. On August 19, 1981, Madison Brothers Delivery Service, Inc., entered into an informal settlement agreement with the Commission whereby it agreed to make restitution of \$17,479 to its owner-operators. In addition Madison agreed to amend its leases to comply with Commission leasing regulations.

On May 7, 1981, by a formal settlement with the Commission, Flash Trans-

<sup>8</sup>*I.C.C. v. Atlas Van Lines, Inc.*, Civil No. 3-81-266 (E.D. Tenn., May 22, 1981).

<sup>9</sup>*Southern Pacific Transportation Company v. Continental Shippers Association, Inc.* 642 F.2d 236 (8th Cir. 1981).



portation & Leasing Company, Inc., agreed to pay \$17,000 to owner-operators in order to satisfy their claims against Flash.

The U.S. District Court for the Eastern District of Pennsylvania ordered A.E.F.-Selover Transportation, Inc., to make restitution of \$11,500 to owner-operators for underpayment of fuel surcharges.<sup>10</sup>

### Revocation of Authority

The Commission revoked the limited term automobile driveaway authority of American International Driveaway between Hawaii and California and between the 48 states. The carrier was found unfit because of repeated violations of Commission regulations.<sup>11</sup> The Commission revoked the certificate of O'Nan Transportation Company, Inc., after the agency concluded that the certificate had been obtained under fraudulent circumstances.<sup>12</sup>

### Court Injunctions

Injunctions were obtained in Federal courts for various violations. In exercising its authority concerning the transportation of hazardous wastes, the Commission obtained a number of injunctions against unauthorized carriers. For example, a preliminary injunction was obtained against Blue Anchor Environmental Corporation of Marlton, New Jersey enjoining the carrier from engaging in the interstate transportation of hazardous

wastes without holding the appropriate operating authority and without having filed with the Commission the required evidence of insurance.<sup>13</sup>

The Commission also obtained an injunction prohibiting Glover Trucking Corporation of Suffolk, Virginia, from transporting high value radioactive material without Commission authority.<sup>14</sup>

The Commission obtained a permanent injunction against the Peoria & Pekin Railway Company to prevent the carrier from removing and laying tracks.<sup>15</sup> In this manner, the railroad was seeking to assess a switch charge on thousands of cars which were about to begin moving to a plant which Archer-Daniels-Midland had built to manufacture alcohol for use in beverages and in the manufacture of gasohol. The injunction insured the plant's operation and preserved the employees' jobs in an area which is economically depressed.

Injunctions were obtained against three separate passenger motor carriers, two of which had been involved in fatal accidents during the course of transportation without authority between points in California and Nevada casinos.<sup>16</sup> The third carrier was involved in transporting passengers without authority.

<sup>10</sup> *I.C.C. v. A.E.F.-Selover Transportation, Inc.*, Civil No. 81-0252 (E.D. PA., June 2, 1981).

<sup>11</sup> MC-129615 (Sub no. 4), *American International Driveaway Extension—Hawaii*, (not printed) decided January 6, 1981.

<sup>12</sup> MC-133916, *O'Nan Transportation Company, Inc.*, (not printed) decided December 4, 1980.

<sup>13</sup> *I.C.C. v. Blue Anchor Environmental Corporation*, Civil No. 81-1382 (D.N.J., May 8, 1981).

<sup>14</sup> *I.C.C. v. Glover Trucking Corporation*, Civil No. 81-210N (E.D. Va., April 10, 1981).

<sup>15</sup> *I.C.C. v. Peoria & Pekin Union Railway Company, et al.*, Civil No. 81-1109 (C.D. Ill., July 17, 1981).

<sup>16</sup> *I.C.C. v. Gayle R. Robinson*, Civil No. 81-0552 (C.D. Cal., July 27, 1981); *I.C.C. v. Desco Tours, Inc.*, Civil No. 81-3313 (C.D. Cal., July 10, 1981); and *I.C.C. v. Gardner Edward Kent d/b/a/ Green Tortoise*, Civil No. 81-1561 (N.D. Cal., June 16, 1981).

## COURT ACTIONS

The litigation this year focused largely on Commission decisions that interpreted and gave practical meaning to the provisions of the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980. The important legislative changes incorporated in those Acts gave rise to court decisions that have a significant impact on the way in which rail and motor carriers serve the shipping public.

During the past year, the Office of the General Counsel handled 800 cases in Federal courts. At the beginning of the fiscal year, 499 cases were pending, while 301 additional cases were instituted during the year. As of September 30, 1981, the courts had concluded 320 cases, with 480 in various stages of litigation. Of these cases concluded, 13 were by the Supreme Court, 297 by the Federal courts of appeals, and 10 by Federal district courts.

On October 14, 1980 the Staggers Rail Act became law. A primary purpose of the Act was to provide for the restoration, maintenance and improvement of the physical facilities and financial stability of the Nation's rail system. As the fiscal year drew to a close, a number of court actions were pending in which various sections of the Act are at issue. Two cases involve the constitutionality of Section 214 of the Act.<sup>1</sup> Section 214 limits state regulation of intrastate rail rate matters by requiring states to obtain Commission certification and, if certified, to regulate only in accordance with the Federal scheme. In the court actions, plaintiffs contended that Section 214 (1) violated the commerce clause and the

tenth amendment to the Constitution by coercing states to enforce Federal policy; and (2) violated the due process clause of the fifth amendment by permitting railroads to extract monopoly profits from captive intrastate shippers. In the *Montana* case, plaintiffs additionally argued that the Staggers Act did not give persons a meaningful opportunity to challenge rates that were in effect at the time the Act was passed, and therefore deprived shippers of equal protections and due process. In response, the government contended that (1) Congress found that state regulation of intrastate rail rate has burdened interstate commerce, and Section 214 is designed to eliminate that burden, and (2) Congress' power to regulate intrastate state rail rates is not limited by the tenth amendment. The government also contended that the Staggers Act did not violate the fifth amendment, and even if plaintiffs showed that the Act permitted railroads to enjoy monopoly profits, no taking of property would occur.

During fiscal year 1981, several court decisions interpreted portions of the Staggers Rail Act. The United States Court of Appeals for the District of Columbia Circuit reversed a Commission rulemaking proceeding interpreting Section 204 of the Act.<sup>2</sup> Section 204 requires all rail carriers to maintain rates for the transportation of recyclable materials, other than scrap iron or steel, at an average level which the Commission established as a revenue-to-variable cost level of 146 percent. The Commission prohibited rate increases above that level but did not require an immediate reduction in rates because inflation would reduce

<sup>1</sup> *Texas v. United States*, No. A-80-CA-487 (W.D. Tex.) and *Montana v. United States*, No. 81-29-GF (D. Mont.)

<sup>2</sup> *National Association of Recycling Industries, Inc. v. I.C.C.*, (D.C. Cir. 1981), No. 81-1051, U.S.C.A., D.C. Cir. (July 15, 1981).

the revenue-to-variable cost ratios if revenues remained constant as costs increased. The court ruled that Section 204 required rail carriers to reduce their rates immediately to the 146 percent level.

In another important Staggers Act case, the United States Court of Appeals for the Fifth Circuit affirmed in all significant respects a Commission decision which exempted from regulation rail and rail-owned truck transportation in connection with trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service.<sup>3</sup> The Commission granted the challenged exemption pursuant to Section 213 of the Staggers Act. The court held that rail-owned motor TOFC/COFC service is "transportation provided by rail carriers" for the purposes of Section 213 and was also properly exempted.

Before the Staggers Act was enacted, the Commission adopted rules exempting "designated operators" (small carriers which provide service over small segments of track that otherwise would have been abandoned under the Regional Rail Reorganization Act of 1973) from the provisions of the Interstate Commerce Act governing mergers, interlocking directorates, and labor protection. In a case before the United States Court of Appeals for the District of Columbia Circuit, petitioners argued that the exemption provision (Section 10505) only applied to rate matters and that Section 213 of the Staggers Act expressly prohibited exemption from labor protection.<sup>4</sup> The Commission argued that Section 10505 could be employed outside the

rate area and that the Staggers Act did not apply because the administrative proceedings were completed prior to its enactment. The court agreed that Section 10505 covered non-rate matters but held that the Staggers Act applied, and prohibited exemption from labor protection.

The Commission won an important victory in the United States Court of Appeals for the Fifth Circuit in the area of railroad mergers.<sup>5</sup> The court affirmed the Commission's approval of the merger of the Burlington Northern (BN) and St. Louis-San Francisco Railway Companies (Frisco). In the past, the Commission imposed protective conditions in rail mergers to protect weak railroads. But in the BN/Frisco merger, the agency imposed such conditions only to preserve "essential services" to the public, rather than to preserve the particular corporations providing those services. The court held that the "essential services" standard was consistent with the Commission's duty to consider the effect of the proposed merger on the adequacy of transportation to the public and that it was essentially a new weighing of the factors the Commission traditionally considered in determining the public interest.

The Commission also announced two new policies in the BN/Frisco decision: (1) that indemnification of competitor railroads for traffic losses resulting from mergers will no longer be imposed as protective conditions; and (2) that the

<sup>3</sup>*American Trucking Associations, Inc. and Sola Motor Freight Lines, Inc. v. I.C.C.*, 656 F.2d 1115 (5th Cir. 1981).

<sup>4</sup>*John W. McGinness, Brotherhood of Locomotive Engineers and Railway Labor Executives' Association v. I.C.C.*, No. 79-2457, U.S.C.A. D.C. Cir. (August 17, 1981).

<sup>5</sup>*Missouri-Kansas-Texas Railroad Company v. United States*, 632 F.2d 392 (5th Cir. 1980), cert. den., 447 U.S. 979 (1981).

Commission will not impose any protective condition not sought by a protesting railroad. The court held that an agency may change its policies in the course of a specific adjudication and that these changes were adequately explained.

In the area of rail abandonments, the Supreme Court adopted the Commission's view that state courts may not subject railroads to liability for damages resulting from cessation of rail service where the agency permitted abandonment.<sup>6</sup> The Commission appeared and argued this case as *amicus curiae*.

In another abandonment case, the United States Court of Appeals for the Eighth Circuit reversed and remanded a Commission decision authorizing Illinois Central Gulf Railroad to abandon part of its line.<sup>7</sup> The court held that the Commission had failed to balance the competing benefits and burdens to all parties, as required by statute, and erred in failing to consider certain train crew wages as unavoidable costs when it made its economic computations. The court found that since an enforceable collective bargaining agreement obligated ICG to pay two of its crews indefinitely, regardless of whether the trains moved, this expense was not avoidable upon abandonment of the line. The court's decision designating labor costs as unavoidable is significant because such costs are a large component of overall railroad costs and they are usually governed by collective bargaining agreements.

In another significant rail case, the United States Court of Appeals for the District of Columbia Circuit affirmed a Commission decision that transportation of nuclear waste materials in "special train service" (STS) was unnecessary and constituted wasteful transportation service.<sup>8</sup> In the administrative proceeding, the Commission found that rates based on STS were unreasonably high and prescribed rates based on regular train service. In defining the Commission's jurisdiction to determine the need for STS as a safety measure, the court held that because the agencies with primary jurisdiction over safety standards (DOT and NRC) had not required STS as a safety measure, a presumption arose that additional outlays of funds for STS were not reasonable. In the instant case, however, the court found that the Commission had not relied upon a presumption, but based its decision upon substantial evidence that although costly, STS provided no real safety benefits.

In an important railroad rate case, the United States Court of Appeals for the Seventh Circuit reversed a Commission decision approving Conrail's cancellation of some of its joint rates with the Ann Arbor Railroad System.<sup>9</sup> Conrail cancelled its joint rates with Ann Arbor after Ann Arbor, in an effort to increase its revenues by attracting more traffic, flagged out of a general rate increase. The consequence of Ann Arbor's action was that all participants in joint rates with it were denied increases on those commodities covered by the flagout. The

<sup>6</sup>*Chicago and North Western Transportation Co. v. Kalo Brick and Tile*, 450 U.S. 311 (1981).

<sup>7</sup>*City of Cherokee v. I.C.C.*, 641 F.2d 1220 (8th Cir. 1981), cert. den., 50 U.S.L.W. 3278 (October 13, 1981).

<sup>8</sup>*Consolidated Rail Corporation v. I.C.C.*, 646 F.2d 642 (1981), cert. den., 50 U.S.L.W. 3376 (November 9, 1981).

<sup>9</sup>*Green Bay and Western Railroad Co. v. United States*, 644 F.2d 1217 (7th Cir. 1981).



court held that the Commission's approval of Conrail's joint rate cancellation was not supported by substantial evidence. The court found that the Commission had improperly applied the statutory criteria for determining whether the joint rate cancellation was in the public interest. It also stated that Conrail's action seemed contrary to Ann Arbor's right of independent action. Independent action is the right of a carrier to take a rate action different from that collectively agreed upon by the members of a rate bureau. The court reasoned that if Conrail could, in effect, punish a carrier for declining to raise rates, then no railroad would have the ability to act independently.

The demise of the Chicago, Rock Island and Pacific Railroad gave rise to significant cases in the area of railroad bankruptcy and reorganization. The United States Court of Appeals for the Seventh Circuit decided three cases covering subsidized directed service over the Rock Island lines. In the first case, the court upheld the Commission's determination that no rent need be paid to Rock Island for use of its lines by Kansas City Terminal Railway Company (KCT) during the period of subsidized directed service.<sup>10</sup> The court found that because KCT was fulfilling Rock Island's common carrier obligation to provide service, the failure of KCT to pay rent was not a "taking" of private property for a public purpose without just compensation in violation of the fifth amendment to the Constitution. The court found that this common carrier obligation was not relieved by Rock Island's "cashlessness."

The Rock Island trustees also challenged several supplemental Commission orders authorizing KCT to repair Rock Island's tracks and offset the cost against rents owed Rock Island. The court adopted the Commission's suggestion that consideration of the offset question be deferred until the overall final accounting is evaluated.

In a second Rock Island decision, the court affirmed several "permissive" service orders in which the Commission authorized numerous rail carriers to operate over Rock Island's tracks and set the compensation to be paid to Rock Island for use of the lines.<sup>11</sup> The trustees and creditors of the Rock Island estate again argued that any use of Rock Island property was a "taking" for which "just compensation" was required. The court rejected this argument. The court further held that the Commission had the power to set compensation under a permissive, unsubsidized service order as an adjunct to its authority to issue directed service orders. The court also upheld two formulas fashioned by the Commission for determining compensation.

Finally, in a third decision involving the Rock Island, the Seventh Circuit upheld Commission orders which authorized service over lines of the Rock Island pursuant to several sections of the Rock Island Transition and Employee Assistance Act (RITA).<sup>12</sup>

RITA itself came under court challenge. The constitutionality of various provisions of RITA, including the ones

<sup>10</sup> *William M. Gibbons v. United States*, 600 F.2d 1227 (7th Cir. 1981).

<sup>11</sup> *William M. Gibbons, et al. v. United States*, 660 F.2d 225, (7th Cir. 1981).

<sup>12</sup> *William M. Gibbons v. United States*, No. 80-2009, et al. U.S.C.A., 7th Cir. (not printed) October 22, 1981).



(a) permitting the Commission to authorize services over the Rock Island's lines and (b) establishing a mechanism for compensating Rock Island employees upon abandonment of operations, is being challenged in a proceeding still pending before the reorganization court. The question of compensation of employees was the subject of a proceeding pending before the United States Supreme Court at year's end, in which the Commission sought to have an order of the Rock Island Reorganization Court enjoining implementation of the labor protection provisions of RITA. That order, which was affirmed by an equally divided United States Court of Appeals for the Seventh Circuit sitting *en banc*, declared unconstitutional and enjoined implementation of the labor protection requirements of Section 106 of RITA, as amended by Section 701 of the Staggers Rail Act.<sup>13</sup> Section 106 required the Rock Island estate and employees of the railroad to arrange a labor protection agreement and required the Commission to intervene if the parties could not reach an agreement. The issues presented in the proceeding were: (1) whether the statutory requirement that the Rock Island estate compensate its affected employees constitutes a "taking" of the estate's property; and (2) if it does constitute a "taking," whether the statute provides a means by which the estate will be adequately compensated. The Commission contended that the relevant statutory provisions impose a permissible regulatory burden, and hence, no taking was involved.

In the area of contract rates, the United States Court of Appeals for the Eighth Circuit affirmed the Commission's policy of considering alleged rate contracts when determining rate reasonableness and the application of that policy in a western coal proceeding.<sup>14</sup> The dispute concerned the agency's power to enforce a pre-Staggers Act contract. The Commission found that the railroad and the utility intended to be bound by their pre-Act contract rate. One of the issues presented to the court was whether the Staggers Act deprived the Commission of jurisdiction to compel a rate reduction to the level set in the contract. The railroad argued that the Commission had no jurisdiction, because the agreed rate resulted in a revenue/variable cost ratio below the jurisdictional threshold needed for Commission action under the Staggers Act. The Commission maintained that the Act did not apply because the case was decided before the effective date of the Staggers Act, but that even if it did apply, a 'grandfather clause' in the Staggers Act and its legislative history indicates that the Commission retains jurisdiction over pre-Act agreements. The court found the Act inapplicable because the market dominance determination required during the first 90 days of an investigation had already been made in the case before the Act was passed.<sup>15</sup>

<sup>13</sup> *Iowa Power & Light Co. v. I.C.C.*, 647( ) F.2d( ) 796 (8th Cir. ( ) 1981).

<sup>14</sup> The Commission filed amicus briefs in other "contract rate" cases. See *Metallurg, Inc. v. Burlington Northern, Inc.*, No. 81-1478 U.S.C.A. (8th Cir. appeal docketed, May 1, 1981). This case had essentially the same fact pattern as *Iowa Power & Light*. The railroad entered into rate agreements with the shippers prior to the Staggers Act. The railroads then published rates higher than those in the agreements, and district courts enjoined the effectiveness of the rates. The Commission took the position that enforcement of these pre-Staggers Act contracts was within the Commission's exclusive jurisdiction.

<sup>15</sup> *Railway Labor Executives' Association v. Willicott M. Gibbons*, appeal briefed, No. 80-415 (October Term, 1980).

The Commission's refusal to grant reparation of penalty demurrage incurred on shipments of frozen coal was affirmed by the United States Court of Appeals for the Fourth Circuit.<sup>16</sup> A demurrage charge, in essence, encourages shippers to return rail cars promptly by imposing a penalty for failure to do so. A demurrage charge also compensates the rail carrier for the additional time that its cars are used by the shipper. The shipper in this case was willing to pay that part of the demurrage charge which constituted compensation, but argued that it should not have been assessed a penalty because its failure to return the cars promptly was due to factors beyond its control. The Commission argued that because the parties had entered into a contractual agreement, known as an "average agreement," the usual Commission policy of not imposing a penalty when the shipper used due diligence in attempting to return the cars was inapplicable. The court agreed with the Commission. The decision was significant because it was the first judicial opinion addressing the Commission's policy of denying reparations when the shipper is party to an average agreement.

Litigation in the past year also resulted in a number of significant motor carrier operating rights decisions. The Motor Carrier Act of 1980, which became law on July 1, 1980, liberalized entry standards for motor carriers of property. Pursuant to the Act, the Commission issued guidelines for carriers to follow in framing requests for operating authority and for removing restrictions from existing certifi-

icates.<sup>17</sup> The Commission described commodity and territorial guidelines that would normally be appropriate in motor carrier applications. For example, carriers were urged to apply for county-wide authority. In addition, guidelines urged carriers to apply for authority to transport all commodities within a standard classification. In court, the Commission argued that these new guidelines were only presumptions which could be rebutted by either the applicant or the protestants. Unless rebutted, however, the applicant would be granted authority in terms of the commodity and territorial classes, even if the applicant had originally sought narrower authority.

The Commission's implementation of Section 14 of the Motor Carrier Act,<sup>18</sup> which deals with rate bureaus, was challenged in the United States Court of Appeals for the Fifth Circuit.<sup>19</sup> Section 14 of the Act restricts the rate bureau actions that the Commission may approve. The most important of these restrictions protects a carrier's right of independent action. To implement Section 14, the Commission prohibited rate bureaus from requiring their members to give the bureaus advance notice of independent rate actions before the rates are filed with the Commission. The Commission contended that the rules are consistent with the Act and past agency practice of for-

<sup>16</sup> Ex Parte No. 55 (Sub No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)*, 45 F.R. 86798 (December 31, 1980) and Ex Parte No. MC-142 (Sub No. 1), *Removal of Restrictions from Authorities of Motor Carriers of Property*, 45 F.R. 86747 (December 31, 1980).

<sup>17</sup> Ex Parte No. 297 (Sub No. 5), *Motor Carrier Rate Bureaus Implementation of P.L. 96-296*, 45 F.R. 86736 (December 31, 1980).

<sup>18</sup> *American Trucking Associations, Inc. v. United States*, No. 80-7674, appeal briefed (5th Cir., August 11, 1981).

<sup>19</sup> *Monongahela Power Company v. I.C.C.*, 640 F.2d 504 (4th Cir. 1981), cert. den., 50 U.S.L.W. 3238 (October 5, 1981).

bidding bureaus from requiring their members to follow mandatory bureau procedures for handling independent actions.

In another important proceeding, the United States Court of Appeals for the Fifth Circuit affirmed a Commission policy that permits private carriers to seek for-hire authority.<sup>20</sup> The court held that the Interstate Commerce Act did not prohibit for-hire operations by private carriers. The Commission adopted the new policy in view of the expansion of the motor carrier industry, the wasteful, empty mileage often experienced by private carriers, and the need to promote efficient operations. The court found that the policy statement was "rational."

In the first published court opinion involving review of an emergency temporary authority (ETA) decision, the United States Court of Appeals for the Fifth Circuit upheld the Commission's denial of ETA to a carrier.<sup>21</sup> The case was decided under the Motor Carrier Act of 1980. The court held that the new Act did not change the traditional standard for determining ETA authority ("immediate need" for the service). It also held that the Commission need not give reasons for its decision as long as the Commission's choice could be understood from the record. It further noted that although the standards to be applied in TA and ETA cases have not changed, the new law reflects heightened Congressional concern for quick action in temporary authority licensing proceedings.

<sup>20</sup> *Mercury Motor Express, Inc. v. United States*, 648 F.2d 315 (5th Cir. 1981).

<sup>21</sup> *Gamble v. I.C.C.*, 636 F.2d 1101 (5th Cir. 1981).

## FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting, auditing, financial analysis, cost analysis, and cost development and reporting functions. These involve preparing, amending and interpreting prescribed accounting and financial reporting rules, examining and analyzing accounts and financial statements, and compiling and publishing transportation statistics and cost studies.

### Accounting and Reporting Rulemaking

The Commission's prescribed accounting and reporting systems are continually reviewed with the objective of providing current useful information. This program includes modernizing the systems to keep pace with generally accepted accounting principles (GAAP). In developing amendments to these systems, the rulemaking process allows interested parties to participate in formulating the rules.

The Commission continued its efforts during the fiscal year to reduce the reporting burden of carriers of all modes. Reports only are required for information needed by the Commission regularly and frequently. This resulted in the streamlining and elimination of the following report forms and accounting provisions:

- The annual report on additions and retirements of railroad property used in transportation was eliminated from the filing requirements of Class I railroads.<sup>1</sup>
- Quarterly reports of operating statistics filed by Class I railroad companies were eliminated. Instead, data will be filed on an annual basis in each railroad's annual

report to the ICC. Data on revenue tons and ton-miles was revised<sup>2</sup>

- An annual report of piggyback traffic statistics was eliminated.<sup>3</sup>
- An annual report of freight commodity statistics filed by all Class I motor carriers of property was eliminated.<sup>4</sup>
- Report forms for all Class III carriers, annual report form R-4, and annual report form MP-2 were eliminated. Also, the report forms and accounting systems for refrigerator car lines, maritime carriers, inland and coastal waterway carriers, and freight forwarders were eliminated.<sup>5</sup>

The Commission also undertook the following financial investigations and rulemakings:

- The minimum rule on capital expenditures was increased from \$200 to \$500 for motor carriers of property and motor carriers of passengers in order to reduce the carriers' accounting burden, accelerate the capital recoverability of minor capital expenditures and adjust the minimum rule's dollar amount for inflation.<sup>6</sup>
- A final rule which revised the regulations pertaining to developing depreciation rates for railroad and equipment property. Individual railroads rather than the Commission now are required to prepare depreciation studies and develop depreciation rates for Commission

<sup>1</sup> Docket No. 37383, *Revisions of CFR Part 1262 to Eliminate Filing of BV Form 588 by Class I Railroad Companies*, (not printed), decided November 26, 1980.

<sup>2</sup> Docket No. 37514, *Revision to Class I Railroad Quarterly Report Forms CBS and Elimination of Forms OS-A, OS-B and OS-C*, (not printed), decided February 25, 1981.

<sup>3</sup> Docket No. 37531, *Elimination of the Piggyback Traffic Statistics Report*, (not printed), decided February 12, 1981.

<sup>4</sup> Docket No. 37269, *Elimination of Annual Report Form TCS for Motor Carriers of Property*, (not printed), decided January 28, 1981.

<sup>5</sup> Docket No. 37523, *Reduction of Accounting and Reporting Requirements*, (not printed), decided December 1, 1980.

<sup>6</sup> Docket No. 37562, *Increasing the Minimum Rule on Capital Expenditures*, (not printed), decided September 3, 1981.



review. This will allow railroads more autonomy in determining annual composite depreciation rates.<sup>7</sup>

- A final rule which requires all carriers subject to the ICC's uniform system of accounts to capitalize interest during construction in accordance with Financial Accounting Standards Board Statement No. 34. The regulation now aligns with the provisions of generally accepted accounting principles.<sup>8</sup>

- A proceeding which proposed costing standards for railroads to be used in determining their cost recovery percentages (CRP). The CRP establishes the ICC's jurisdictional threshold for rate-making purposes. The 1981 CRP was calculated to be 197.5 percent.<sup>9</sup>

- A proceeding which prescribed new procedures for requesting variable cost and revenue determinations for joint rates subject to surcharge or cancellation.<sup>10</sup>

- A proceeding which proposes to change the Commission's method of accounting for track structure from retirement-replacement-betterment accounting to ratable depreciation accounting.<sup>11</sup>

- A proceeding which proposes to use a price deflator formula to reclassify railroads so that classification changes will result from real expansion in business rather than inflation.<sup>12</sup>

<sup>7</sup> Docket No. 37281, *Railroad Performing Depreciation Studies*, (not printed), decided March 24, 1981.

<sup>8</sup> Docket No. 37549, *Capitalization of Interest Cost During Construction*, (not printed), decided January 26, 1981.

<sup>9</sup> Ex Parte No. 399, *Cost Recovery Percentage (CRP)*.

<sup>10</sup> Ex Parte No. 389, *Procedure for Requesting Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation*.

<sup>11</sup> Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, (NPR), (not printed), decided June 10, 1981.

<sup>12</sup> Docket No. 38559, *Railroad Classification Index*, (NPR), (not printed), decided July 30, 1981.

## Cost and Financial Analysis

During fiscal 1981, the ICC made substantial progress toward the completion and release of a new uniform rail costing system (URCS). One of the most significant factors entailed the reprogramming of phases I and II of the URCS program to enhance the efficiency of the system. Two other important aspects involved projects to develop a computerized movement costing model and carload cost scales, both of which would be adaptable to the URCS system. To acquaint the shipping public with the system, the ICC conducted a series of seminars throughout the United States jointly with the National Industrial Traffic League.

During FY 1981, the Commission analyzed the financial evidence submitted in connection with motor carrier requests for general rate increases. These analyses included an assessment of the revenue needed by the carriers to cover their operating costs and provide them with a fair and reasonable return on invested capital. The Commission also conducted a study that found that the railroads' current cost of capital or fair return rate, for comparison with returns on net investment, was 12.1 percent.<sup>13</sup>

The Commission also monitored the financial condition of large carriers and analyzed their ability to meet shipper demand. Updated analyses of the current cash position and estimated cash needs of the Chicago, Rock Island and Pacific Railroad's directed service carrier (Kansas City Terminal Railway Company) were continually prepared for monitoring purposes and submitted to Congress. Quarterly reports were publicly released

<sup>13</sup> Ex Parte No. 381, *Adequacy of Railroad Revenue (1980 Determination)*, decided October 23, 1980.



which show the latest quarterly and 12 month period earnings and traffic volume data of Class I railroads, the 100 largest trucking companies, the 15 largest household goods carrier and the ten largest bus companies. Only two Federal loan guarantees to railroads are outstanding. There are also several loan guarantees to bankrupt railroads that are in default. The Department of Justice is attempting to settle these loan guarantees.

The Commission developed and implemented a user manual<sup>14</sup> for summarizing cost and revenue data needed to expedite rail abandonment analyses. This program manual was designed as a means of addressing stringent statutory time constraints created by the passage of the Staggers Rail Act of 1980.

### **Directed Service**

On September 26, 1979, the Commission concluded that the Rock Island had exhausted all of its operating funds and directed the Kansas City Terminal Railway Company (KCT) to operate over the entire Rock Island system beginning October 5, 1979. This directed service authority expired on March 23, 1980. This was the first Commission directed service experience involving such a large and complex operation. As of September 30, 1981, \$81.6 million of an \$83.5 million total appropriation was disbursed to KCT. KCT issued its final accounting report on August 7, 1981.

Subsequent to the termination of directed service on March 23, 1980, the

Commission, with advice from the Department of Transportation, authorized 22 railroads to operate certain Rock Island line segments without government funding. The railroads provided service on a voluntary basis so that a substantial portion of Rock Island service could be continued. A number of railroads expressed an interest in purchasing Rock Island lines they were operating. The ICC also authorized the state of South Dakota and three railroads to rehabilitate certain segments of trackage. Federal subsidy totaled approximately \$5.4 million. Payments for work completed totaled approximately \$971,000 by South Dakota and three million dollars by the three railroads.

### **Preliminary Certification of Railroad Cost Accounting Systems**

The Staggers Act required all Class I railroads to file a request with the Commission for preliminary certification of their cost accounting system by March 30, 1981. The Commission auditors reviewed and verified the representations in these requests. Based upon this review, the Commission granted preliminary certification to all 35 Class I railroads. Subsequently, formal cost accounting standards will be developed and a final certification rendered based on implementation and compliance with these standards.

<sup>14</sup> User documentation—Computer Assisted Cost and Revenue Evidence Summary for Abandonment Proceedings.

### **Rail Cost Adjustment Factor (Index)**

The Staggers Act required the Commission to publish a rail cost adjustment factor commencing with the fourth quarter of 1980 and subsequently at least on a quarterly basis. The Commission complied with this provision and uses the cost adjustment factor as a basis for a zone of rail rate flexibility for individual railroad rate changes.

Other important ICC financial oversight performed during FY 1981 included:

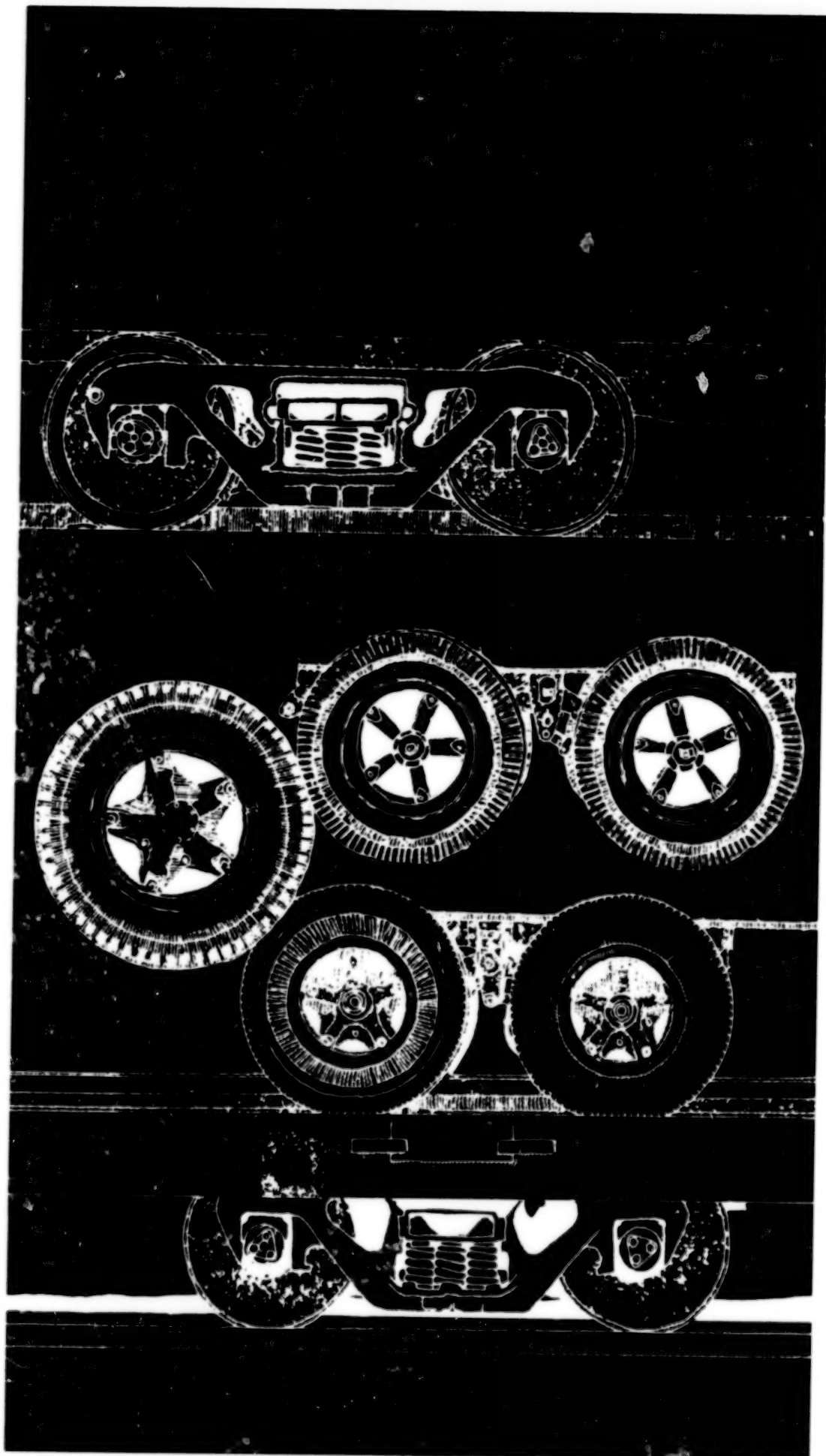
- Establishment of a task force to study indexing theory and methodology to sat-

isfy Staggers Act requirements for indexing rail rates for general increases.

- Continued monitoring of motor carrier diesel fuel prices throughout the United States. A weekly summary of fuel price increases was developed to allow the ICC to determine the applicable fuel surcharge level for the motor carrier industry.

- Preparation of two studies of the Alaska Railroad's water/rail rates. One study found that the rates were above a reasonable minimum and contributed to the going concern value of the railroad. The second study concluded that water/rail contract rates and tariff charges covered the variable cost of providing service.

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## APPENDIX A

### Commission Organization (as of December 31, 1981)

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organization chart.

#### STAFF OFFICIALS

##### Office of the Chairman

###### Office of Communications:

*Director* ..... Robert R. Dahlgren

###### Office of Governmental Affairs:

*Congressional Relations Officer* ..... Bruce N. Hatton

*Office of Legislative Counsel* ..... Janice M. Rosenak

###### Small Business Assistance Office:

*Director* ..... Dan G. King

##### Office of the Managing Director:

*Managing Director* ..... William R. Johnson

*Assistant Managing Director* ..... John C. Surina

*Director, Personnel Office* ..... Richard H. Mooers

*Chief, Budget and Fiscal Office* ..... Mary G. Hogya

*Chief, Administrative Services* ..... Virgil L. Schultz

*Chief, Systems Development* ..... Edward F. Welkener

*Chief, Management Services* ..... J. B. Robinson

##### Office of the Secretary

*Secretary* ..... Agatha L. Mergenovich

*Assistant Secretary* ..... James H. Bayne

##### Office of the General Counsel:

*General Counsel* ..... Robert S. Burk (Acting)

*Deputy General Counsel* ..... Robert S. Burk

*Associate General Counsel, Section of Litigation  
and Legal Counsel* ..... Kathleen Dollar

*Associate General Counsel, Section of Litigation  
and Legal Counsel* ..... Henri F. Rush

*Associate General Counsel, Section of Litigation  
and Legal Counsel* ..... Ellen Hanson

##### Office of Proceedings:

*Director* ..... Heber P. Hardy

*Associate Director* ..... Richard S. Lewis (Acting)

*Deputy Director, Section of Finance* ..... Richard Kelly

*Deputy Director, Section of Operating Rights* ..... Edward E. Guthrie

*Deputy Director, Section of Rates* ..... Donald Shaw



## STAFF OFFICIALS—Continued

## Office of Transportation Analysis:

<i>Director</i> .....	William R. Southard
<i>Associate Director</i> .....	Richard H. Klem
<i>Chief, Section of Rail Services Planning</i> .....	Michael Sullivan (Acting)
<i>Chief, Section of Energy and Environment</i> .....	Carl Bausch
<i>Chief, Section of Research and Analysis</i> .....	Vacant

## Office of Hearings:

<i>Chief Administrative Law Judge</i> .....	David H. Allard
<i>Assistant Chief Administrative Law Judge</i> .....	James E. Hopkins
<i>Assistant Chief Administrative Law Judge</i> .....	Nolin J. Bilodeau

## Office of Special Counsel:

<i>Special Counsel</i> .....	Edward J. Schack
<i>Deputy Special Counsel</i> .....	Clarke W. Brinckerhoff

## Bureau of Accounts:

<i>Director</i> .....	Ronald S. Young
<i>Deputy Director</i> .....	William F. Moss III

## Office of Compliance and Consumer Assistance:

<i>Director</i> .....	J. Warren MacFarland
<i>Associate Director</i> .....	Bernard Gaillard
<i>Deputy Director, Policy Development and Coordination Staff</i> .....	Vacant
<i>Deputy Director, Section of Operations</i> .....	John H. O'Brien
<i>Deputy Director, Section of Enforcement</i> .....	Charles E. Wagner

## Bureau of Traffic:

<i>Director</i> .....	Martin E. Foley
<i>Assistant Director</i> .....	Neil S. Llewellyn

## DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS

### Region I

<b>Regional Headquarters</b>	Robert L. Abare, Regional Director, 150 Causeway St., Room 501, Boston, MA 02114
Connecticut	135 High St., Hartford, CT 06103
Maine	76 Pearl Street, Rm. 303, Portland, ME 04101
Massachusetts	338 Federal Bldg. and Courthouse, 436 Dwight St., Springfield, MA 01103
New Hampshire	Federal Building and Courthouse, Room 314, Concord, NH 03301
New Jersey	744 Broad St., Room 552, Newark, NJ 07102
New York	910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202 Jacob K. Javits Federal Bldg., 26 Federal Plaza, Room 1807, New York, NY 10278
Rhode Island	John E. Fogarty Federal Bldg., 24 Weybosset St., Room 102, Providence, RI 02903
Vermont	87 State St., Room 303, Montpelier, VT 05602, Mailing Address: P.O. Box 548

### Region II

<b>Regional Headquarters</b>	M. Faith Angell, Regional Director, Federal Reserve Bank Bldg., 101 North 7th St., Room 620, Philadelphia, PA 19106
Delaware	See nearest ICC Field Office in New Jersey, Maryland or Pennsylvania
Maryland	1025 Federal Bldg., Charles Center, Baltimore, MD 21201
Ohio	1301 Superior Ave., Rm. 210, Cleveland, OH 44199
Pennsylvania	Federal Reserve Bank Building, 101 N. 7th St., Room 620, Philadelphia, PA 19106 The Convention Tower Bldg., 4th Floor, 960 Pennsylvania Ave., Pittsburgh, PA 15222
Virginia	10-502 Federal Bldg., 400 North 8th St., Richmond, VA 23240
West Virginia	416 Old Post Office Building, 12th and Chapline Sts., Wheeling, WV 26003

## **DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD AND REGIONAL HEADQUARTERS—Continued**

### **Region III**

<b>Regional Headquarters</b> . . . . .	Benjamin R. McKenzie, Regional Director, 1776 Peachtree St., NW., Room 300, Atlanta, GA 30309
Alabama . . . . .	2121 Building, Suite 1616, 2121 8th Ave., North Birmingham, AL 35203
Florida . . . . .	288 Federal Building, 400 West Bay St., Box No. 35008, Jacksonville, FL 32202 Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166
Georgia . . . . .	1776 Peachtree St., NW., Room 300, Atlanta, GA 30309
Kentucky . . . . .	426 U.S. Post Office, 601 West Broadway, Louisville, KY 40202
Mississippi . . . . .	Federal Building, Suite 1441, 100 West Capitol St., Jackson, MS 39201
North Carolina . . . . .	Room CC-516 Mart Office Bldg., 800 Briar Creek Rd., Charlotte, NC 28205
South Carolina . . . . .	Strom Thurmond Federal Building, 1835 Assembly St., Suite 866, Columbia, SC 29201
Tennessee . . . . .	100 N. Main Bldg., 100 N. Main St., Suite 2006, Memphis, TN 38103 Federal Bldg., 801 Broadway A422, Nashville, TN 37203

### **Region IV**

<b>Regional Headquarters</b> . . . . .	Alfred E. Rathert, Regional Director, Everett McKinley Dirksen Bldg., Room 1304, 219 South Dearborn St., Chicago, IL 60604
Illinois . . . . .	Everett McKinley Dirksen Bldg., Room 1304, 219 South Dearborn St., Chicago, IL 60604
Indiana . . . . .	429 Federal Bldg. and U.S. Courthouse, 46 East Ohio St., Indianapolis, IN 46204
Michigan . . . . .	201 Corr Bldg., 300 East Michigan, Lansing, MI 48933
Minnesota . . . . .	414 Federal Bldg. and U.S. Courthouse, 110 South Fourth St., Minneapolis, MN 55401

North Dakota ..... 268 Federal Bldg. and U.S. Post Office, 675 2nd Ave., North Fargo, ND 58102

Wisconsin ..... U.S. Federal Bldg. and Courthouse, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202

## **Region V**

**Regional Headquarters** ..... Jack K. Huff, Regional Director, 411 West 7th St., Suite 600, Fort Worth, TX 76102

Arkansas ..... 3108 Federal Bldg., Little Rock, AR 72201

Iowa ..... 518 Federal Bldg., 210 Walnut St., Des Moines, IA 50309

Kansas ..... 101 Litwin Bldg., 110 N. Market St., Wichita, KS 67202

Louisiana ..... T-9038 Federal Bldg., U.S. Post Office, 701 Loyola Ave., New Orleans, LA 70113

Missouri ..... 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106  
210 North 12th Street, Room 1465, St. Louis, MO 63101

Nebraska ..... Suite 620, 110 North 14th St., Omaha, NE 68102

Oklahoma ..... 240 Old U.S. Post Office and Courthouse, 215 Northwest 3rd St., Oklahoma City, OK 73102

Texas ..... 411 West 7th St., Suite 600, Fort Worth, TX 76102  
8610 Federal Bldg. and U.S. Courthouse, 515 Rusk Ave., Houston, TX 77002

## **Region VI**

**Regional Headquarters** ..... Regional Director, Suite 500, 211 Main St., San Francisco, CA 94105

Alaska ..... Federal Building and U.S. Courthouse, 701 C Street, Box 7, Anchorage, AK 99513

Arizona ..... 2020 Federal Bldg., 230 North 1st Ave., Phoenix, AZ 85025

California ..... 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, CA 90012  
211 Main St., Suite 500, San Francisco, CA 94105

Colorado ..... 492 U.S. Customs House, 721-19th St., Denver, CO 80202

Idaho ..... 1471 Shoreline Dr., Rm. 110, Boise, ID 83702

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD  
AND REGIONAL HEADQUARTERS—Continued**

Montana .....	Rm. 222, 2602 First Ave. North, Billings, MT 59101
Nevada .....	107 Federal Bldg., 705 North Plaza St., Carson City, NV 89701
New Mexico .....	1106 Federal Office Bldg., 517 Gold Ave., S.W., Albuquerque, NM 87101
Oregon .....	Crown Plaza, Suite 250, 1500 S.W. First St., Port- land, OR 97204
Utah .....	503 U.S. Post Office and Courthouse, 350 South Main St., Salt Lake City, UT 84101
Washington .....	858 Federal Bldg., 915 2nd Ave., Seattle, WA 98174
Wyoming .....	105 Federal Bldg. and U.S. Courthouse, 111 South Wolcott, Casper WY 82601



## INTERSTATE COMMERCE COMMISSIONERS

### 1867-1981

<i>Interstate Commerce Commissioners</i>	<i>State</i>	<i>Party</i>	<i>Oath of Office</i>	<i>End of Service</i>
1. COOLEY, Thomas M.	MI	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	IL	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	NY	Dem.	Mar. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	VT	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	AL	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	VT	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	NY	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	IA	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	GA	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	IA	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	VT	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	IL	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	IL	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	MO	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	CA	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	IA	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	IL	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	KY	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	WI	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	CA	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	CO	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	NJ	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	OR	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	VA	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	MA	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	MA	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. <sup>1</sup>	NJ	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	NY	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	WI	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	WA	Rep.	May 5, 1921	Jan. 6, 1930

<sup>1</sup> Recess appointment only, not confirmed.

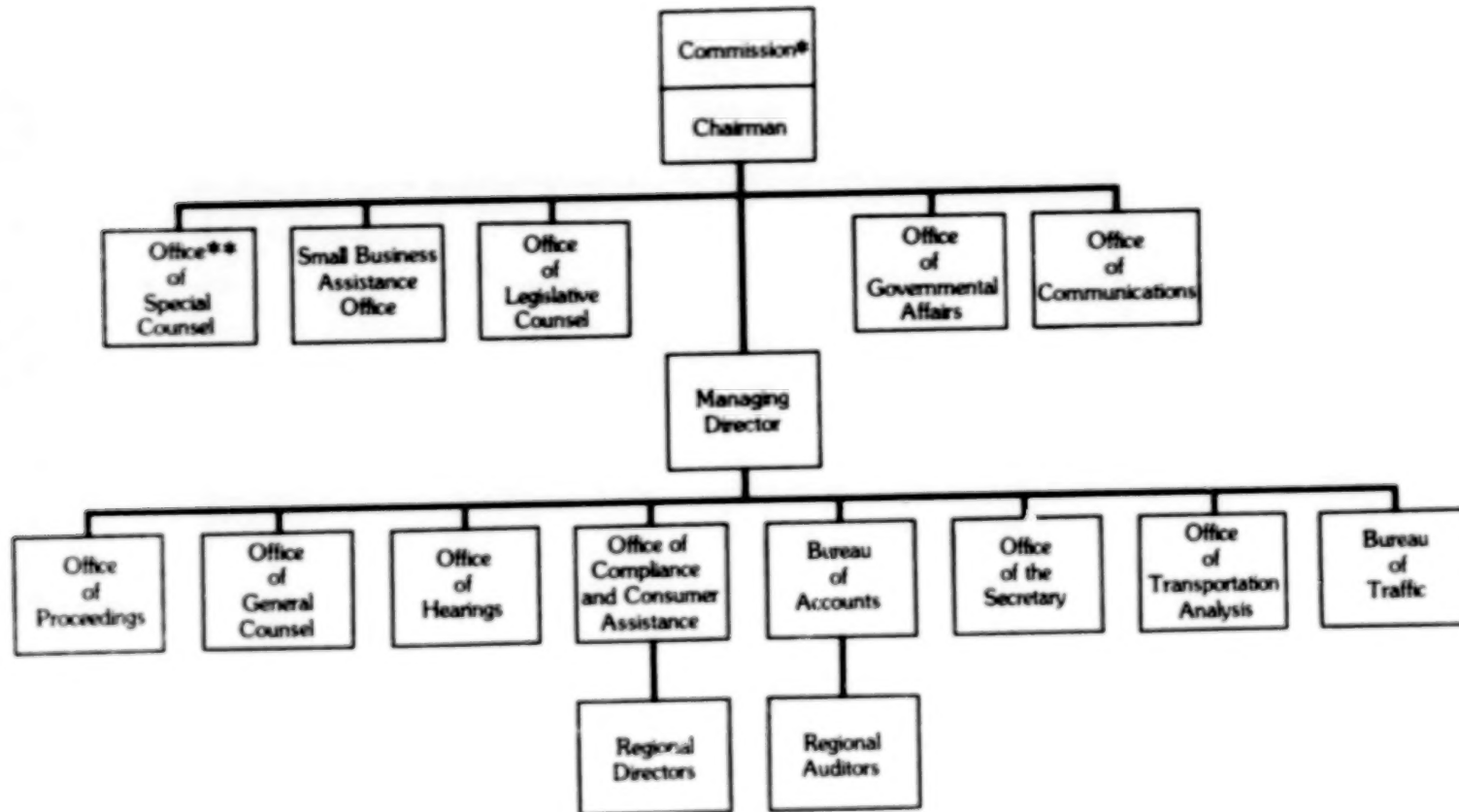
<i>Interstate Commerce Commissioners</i>	<i>State</i>	<i>Party</i>	<i>Oath of Office</i>	<i>End of Service</i>
31. LEWIS, Ernest I.	IN	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	NJ	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	NY	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	AL	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra, Jr.	OK	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	IA	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934
39. LEE, William E.	ID	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	TN	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	PA	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M. W.	TX	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	AL	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	TN	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	AL	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	ND	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	SC	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	IN	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	IA	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	IL	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	UT	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	IN	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	CT	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	WA	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	CA	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	KY	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	CO	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, Everett	TX	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	GA	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	OH	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	FL	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	PA	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	ID	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	VA	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	IA	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	OH	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	MA	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	MD	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	WV	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	TX	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	KS	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	CA	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	IL	Rep.	July 31, 1967	Aug. 31, 1977

<i>Interstate Commerce Commissioners</i>	<i>State</i>	<i>Party</i>	<i>Oath of Office</i>	<i>End of Service</i>
75. BURKE, Wallace R.	CT	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	CA	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C. *	MD	Rep.	Dec. 15, 1969	
78. BREWER, W. Donald	CO	Rep.	July 23, 1970	June 30, 1974
79. WIGGIN, Chester M. Jr.	NH	Rep.	Oct. 24, 1972	July 31, 1973
80. McFARLAND, Alfred T.	TN	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo <sup>1</sup>	CA	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel Jr.	WA	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L. *	MA	Rep.	Mar. 14, 1974	
84. CORBER, Robert J.	VA	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	TX	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A. *	CT	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W. *	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus *	IL	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E. *	VA	Dem.	Apr. 21, 1980	
90. TAYLOR, Reese H. Jr. *	NV	Rep.	June 25, 1981	

\*Commissioners who are still serving.

<sup>1</sup> Recess appointment only, not confirmed

## INTERSTATE COMMERCE COMMISSION



November 1981

\*In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rulemakings and significant adjudications are decided by the entire Commission.

\*\*Subject to administrative supervision of the Chairman, but in all other respects is accountable to the Commission.

## APPENDIX B

### Commission Workload

TABLE 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1981

Case Type	Finance						Total
	Closings						
	Open-ings	Modi- fied Proce- dure	Unop- posed Grants	Decided by ALJ Decision	Dis- missed/ With- drawn	Other	
Rulemakings . . . . .	11	0	0	0	0	6	6
Abandonments . . . . .	166	56	66	14	5	4	145
Finance docket excluding motor securities . . . . .	314	32	207	12	15	3	269
Motor securities . . . . .	67	0	9	0	2	57 <sup>1</sup>	68
Motor carrier finance . . . .	211	37	196	11	16	7	267
Directly related MC applications . . . . .	65	47	41	9	3	15	115
Small carrier transfer . . . .	577	0	430	2	45	16	493
Other . . . . .	2 <sup>2</sup>	0	0	0	0	3	3 <sup>1</sup>
<b>TOTAL</b> . . . . .	<b>1413</b>	<b>172</b>	<b>949</b>	<b>48</b>	<b>86</b>	<b>111</b>	<b>1366</b>

Case Type	Rates						Total
	Closings						
	Open-ings	Modi- fied Proce- dure	Unop- posed Grants	Decided by ALJ Decision	Dis- missed/ With- drawn	Other	
Rulemakings	83	30	28	0	0	17	75
Investigation and suspension	2	9	0	1	0	0	10
Investigation and suspension (motor)	87	74	0	3	1	0	78
Rail investigation without suspension	9	11	0	1	0	0	12
Other rail formal docket	1016*	54	0	106	77	22	259*
Formal docket	37	12	0	13	0	12	37
Other	9*	1	1	0	0	1	3*
TOTAL	1243*	191	29	124	78	52	474

<sup>1</sup> Includes 55 unopposed cases decided by the Finance Board.

<sup>2</sup> Includes 1 FF and 1 W.

<sup>3</sup> Includes 1 NOR, 1 W and 1 WC.

<sup>4</sup> Includes 853 proceedings filed pursuant to the Staggers Act.

<sup>5</sup> Includes 74 proceedings filed pursuant to the Staggers Act.

<sup>6</sup> Includes 8 motor and 1 rail rate bureau proceedings.

<sup>7</sup> Includes 1 SSM, 1 WC and 1 MCC.

<sup>8</sup> This total is understated because sub-numbered Ex Parte proceedings are not counted as separate proceedings. For example, more than 50 decisions have been issued as sub-proceedings in Ex Parte No. 387, and many others issued in Ex Parte No. 137.



TABLE 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1981—Continued

Case Type	Operating Rights						Total
	Closings						
	Open-ings	Modi- fied Proce- dure	Unop- posed Grants	Decided by ALJ Decision	Dis- missed/ With- drawn	Other	
Rulemakings .....	12	2	0	0	0	17	19
Motor carrier operating rights .....	20461	6406	21248	573	469	6	28702
Motor carrier complaints ..	21	12	0	23	4	1	40
Water carrier operating rights .....	17	6	19	0	0	1	26
Freight forwarder operating rights .....	73	13	46	2	0	3	64
Other .....	13 <sup>1</sup>	2	2	0	0	1	5 <sup>1</sup>
TOTAL	20597	6441	21315	598	473	29	28856

<sup>1</sup> Includes applications for continuing control filed by new carriers<sup>2</sup> Includes 1 FTC, 1 NOR and 3 MCF applications

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1981

**RULES AFFECTING THE BROAD RANGE OF TRANSPORTATION**

(\* indicates action completed)

No. 37130 (Sub-No. 1) .....	Special Docket Proceedings—Waiver of Insignificant Amounts and Simplification of Procedures
Ex Parte No. 55 (Sub-No. 52) .....	Special Procedures Governing Recovery of Expenses by Parties to the Commission Proceedings
Ex Parte No. 73 .....	Regulations for Payment of Rates and Charges—Railroad
Ex Parte No. 263 (Sub-No. 3) .....	Electronic Transmission of Loss and Damage Claims
Ex Parte No. 366 .....	Legal Assistance Referral Service
Ex Parte No. 370* .....	Tariff Improvement 365 I.C.C. 43 (1981)
Ex Parte No. 372 .....	Notice to Shippers of Freight Refused or Unclaimed at Destinations
Ex Parte No. 403* .....	Cargo Liability Study—Report to Congress
Ex Parte No. 406 .....	Electronic Transmission of Freight Bills

**RAILROADS**

No. 37403* .....	Consolidated Rail Corp.—Eliminate Dk. 28300 364 I.C.C. 615 (1981)
No. 37080 .....	Accounting and Reporting of Railroad <sup>1</sup> Freight Train Car Repair Costs
No. 37281* .....	Railroads Performing Depreciation Studies 364 I.C.C. 790 (1981)

**RAILROADS (continued)**

No. 37383*	Revision of CFR Part 1262 to Eliminate Filing of BV Form 588 by Class I Railroad Companies, not printed, November 26, 1980
Ex Parte No. 230 (Sub-No. 5)*	Improvement of TOFC/COFC Regulation 364 I.C.C. 731 (1981)
Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulation (Railroads Affiliated Motor Carriers and other Motor Carriers)
Ex Parte No. 270 (Sub-Nos. 9A, 9B, and 9C)*	Investigation of Railroad freight Rate Structure, not printed, decided May 11, 1981
Ex Parte No. 274 (Sub-No. 6)*	Abandonment of Railroad Lines and Discontinuance of Service 365 I.C.C. 249 (1981)
Ex Parte No. 274 (Sub-No. 7)	CONRAIL Exemption from Abandonment Regulation
Ex Parte No. 282 (Sub-No. 3)	Railroad Consolidation Procedures
Ex Parte No. 282 (Sub-No. 5)	Policy Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings
Ex Parte No. 282 (Sub-No. 6)*	Railroad Consolidation Procedures, General Policy Statement 363 I.C.C. 784 (1981)
Ex Parte No. 282 (Sub-No. 7)	Special Intermodal Authority
Ex Parte No. 282 (Sub-No. 8)	Railroad Consolidation Procedures Time Revisions, not printed, November 7, 1980
Ex Parte No. 289*	Remittance of Demurrage Charges by Common Carriers of Property by Railroad Cost Recovery Procedures 364 I.C.C. 623 (1981)
Ex Parte No. 290*	Procedures Governing Rail Carrier General Increases, not printed, April 30, 1981
Ex Parte No. 290 (Sub-No. 2)*	Railroad Cost Recovery Procedures 364 I.C.C. (1981)
Ex Parte No. 290 (Sub-No. 3)*	Modification of Rail Carrier General Increase, not printed, April 30, 1981
Ex Parte No. 305 (Sub-No. 16)*	Nationwide Increase of 10 Percent in Freight Rates, not printed, February 23, 1981
Ex Parte No. 320*	Special Procedures for Findings of Market Dominance 365 I.C.C. 116 (1981)
Ex Parte No. 320 (Sub-No. 1)*	Rail Market Dominance and Related Considerations 364 I.C.C. 582 (1980)
Ex Parte No. 320 (Sub-No. 2)*	Market Dominance Determinations and Considerations of Product Competition 365 I.C.C. 118 (1981)
Ex Parte No. 324 (Sub-No. 1)*	Standards and Expedient Procedures for Establishing Railroad Rates Based on Seasonal, Regional, or Peak Period Demand for Rail Service, not printed, October 23, 1980
Ex Parte No. 327*	Rate Incentives for Capital Investment, not printed, October 29, 1980

TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1981—Continued

**RAILROADS (continued)**

Ex Parte No. 327 (Sub-No. 1)*	Capital Incentive Rate Regulations, not printed, October 29, 1980
Ex Parte No. 334 (Sub-No. 5)	Zone of Reasonableness for Car Hire Charges
Ex Parte No. 346 (Sub-No. 2)	Rail General Exemption Authority, not printed, January 21, 1981
Ex Parte No. 346 (Sub-No. 3)	Rail General Exemption Authority—Long and Short Haul Transportation
Ex Parte No. 346 (Sub-No. 5)*	Rail General Exemption Authority—Miscellaneous Commodities 364 I.C.C. 945 (1981)
Ex Parte No. 346 (Sub-No. 6)*	Rail General Exemption Authority 365 I.C.C. 40 (1981)
Ex Parte No. 346 (Sub-No. 7)	Railroad Exemption—Export Coal
Ex Parte No. 346 (Sub-No. 8)	Petition to Exempt Boxcar Traffic of CONRAIL
Ex Parte No. 347*	Western Coal Investigation—Guidelines for Railroads, not printed, November 10, 1980
Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines Nationwide
Ex Parte No. 355*	Cost Standards for Railroad Rates 364 I.C.C. 898 (1981)
Ex Parte No. 358 (Sub-No. 1)*	Change of Policy, Railroad Contract Rates (Standards and Procedures), not printed, October 29, 1980
Ex Parte No. 376*	Advance Notice of Proposed Rulemaking—Rerouting of Traffic 364 I.C.C. 827 (1981)
Ex Parte No. 381	Adequacy of Railroad Revenue (1980 Determination) 364 I.C.C. 311 (1980)
Ex Parte No. 387	Railroad Transportation Contracts
Ex Parte No. 388	State Intrastate Rail Rate Authority 364 I.C.C. 881 (1981)
Ex Parte No. 389	Procedure for Requiring Rail Variable Cost and Revenue Determinations for joint Rates Subject to Surcharge or Cancellation
Ex Parte No. 390	Rail Rates Based on Limited Liability
Ex Parte No. 392	Application Procedures for a Certificate to Construct, Acquire, or Operate Railroad Lines
Ex Parte No. 393*	Standards for Railroad Adequacy 364 I.C.C. 803 (1981)
Ex Parte No. 394*	Cost Ratio for Recyclables—1980 Determination 365 I.C.C. 304 (1981)
Ex Parte No. 395*	Feeder Railroad Development Program 365 I.C.C. 93 (1981)
Ex Parte No. 398*	Protests Against Tariffs and Rules 364 I.C.C. 347 (1980)
Ex Parte No. 399	Cost Recovery Percentage

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**RAILROADS (continued)**


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Ex Parte No. 400 .....	Modification of Procedure for Handling Exempt Traffic
Ex Parte No. 402 .....	Reasonably Expected Costs
Ex Parte No. 403* .....	Rail Carrier Liability Study, not printed, September 29, 1981
Ex Parte No. 405 .....	Alaska Railroad Freight Rates Study—1980, not printed, June 1, 1981
Ex Parte No. 409 .....	Rail Carrier Informational State Tariff Filing
Ex Parte No. 411 .....	Complaints Filed Under Staggers Rail Act of 1980
Ex Parte No. 415 .....	Railroad Cost Capital—1981
Ex Parte No. 416* .....	Railroad Revenue Adequacy—1980 Determination 365 I.C.C. 285 (1981)
Ex Parte No. 417 .....	Cost Methodologies for the Northeast Corridor
Ex Parte No. 419 .....	CONRAIL Abandonments Under Northeast Rail Service

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**TRUCK AND BUS COMPANIES**


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Ex Parte No. 55 (Sub-No. 38) .....	Antitrust and Competition Factors in Motor Carrier Finance Cases
Ex Parte No. 55 (Sub-No. 43)* .....	Rules Governing Applications for Operating Authority 364 I.C.C. 508 (1981)
Ex Parte No. 55 (Sub-No. 43A)* .....	Acceptable Forms of Requests for Operating Authority, not printed, December 19, 1980
Ex Parte No. 55 (Sub-No. 43B)* .....	Acceptable Forms of Request for Operating Authority—Classes A and B Explosives 132 M.C.C. 554 (1981)
Ex Parte No. 55 (Sub-No. 44)* .....	Applications Filed Under 49 USC 11344 363 I.C.C. 740 (1981)
Ex Parte No. 55 (Sub-No. 45) .....	Appellate Procedures 132 M.C.C. 539 (1981)
Ex Parte No. 55 (Sub-No. 53) .....	Motor Carrier Consolidation Procedures, General Policy Statement
Ex Parte No. 79 (Sub-Nos. 1 and 2) .....	Control of Duplicate Operating Rights
Ex Parte No. 230 (Sub-No. 6) .....	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)
Ex Parte No. 297 (Sub-No. 5)* .....	Motor Carrier Rate Bureaus—Implementation of P.L. 96-296 364 I.C.C. 921 (1981)
Ex Parte No. 311 (Sub-No. 4)* .....	Review of the Motor Carrier Fuel Surcharge Program, not printed, October 5, 1981
Ex Parte No. 311 (Sub-No. 5)* .....	Fuel Surcharge Program; LTL Surcharge and New Surcharge for Household Goods Carriers, not printed, October 8, 1981
Ex Parte No. 354 .....	Additional Charges of Motor Carriers and Freight Forwarders
Ex Parte No. MC-1 .....	Payments of Rates and Charges of Motor Carriers



TABLE 2.—Rulemaking proceedings pending and closed during fiscal year 1981—Continued

**TRUCK AND BUS COMPANIES (continued)**

Ex Parte No. MC-10 (Sub-No. 2)*	Deletion of 49 C.F.R. 1040—Classification of Brokers and Motor Carriers, not printed, November 10, 1981
Ex Parte No. MC-19 (Sub-No. 23)*	Estimating Practices of Household Goods Carriers, not printed, December 12, 1980
Ex Parte No. MC-19 (Sub-No. 37)*	Claim Dispute Settlement Program for Household Goods Carriers, 132 M.C.C. 563 (1981)
Ex Parte No. MC-42	Handling of C.O.D. Shipments
Ex Parte No. MC-42 (Sub-No. 1)*	Handling of C.O.D. Shipments, not printed, March 12, 1980
Ex Parte No. MC-43 (Sub-No. 12)	Lease Rules Modifications
Ex Parte No. MC-43 (Sub-No. 13)	Lease and Interchange of Vehicles (Rules Modification)
Ex Parte No. MC-58 (Sub-No. 1)	Regulation Governing Designation of Process Agents By Motor Carriers and Brokers
Ex Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures
Ex Parte No. MC-65 (Sub-No. 6)	Petition To Expand Passenger Motor Carrier Superhighway and Deviation Rules
Ex Parte No. MC-67 (Sub-No. 6)	Elimination of Notification of ETA Applications
Ex Parte No. MC-67 (Sub-No. 8)	Rules Governing Temporary Authority and Emergency Temporary Authority
Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries
Ex Parte No. MC-77 (Sub-No. 3)	Elimination of Certificates as a Measure of "Holding Out"
Ex Parte No. MC-82	Provisions for Foreseeable Future Costs
Ex Parte No. MC-88	Detention of Motor Vehicles—Nationwide
Ex Parte No. MC-95 (Sub-No. 1)	Practices of Motor Common Carriers of Passengers—Checked Baggage
Ex Parte No. MC-95 (Sub-No. 2)*	Practices of Motor Common Carriers of Passengers—Checked Baggage 132 M.C.C. 560 (1981)
Ex Parte No. MC-95 (Sub-No. 3)	Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service
Ex Parte No. MC-96 (Sub-No. 3)*	Property Broker Practices 132 M.C.C. 233 (1980)
Ex Parte No. MC-96 (Sub-No. 6)*	Multiple Pickups of Town Patrons, not printed, April 1, 1981
Ex Parte No. 98*	New Procedures—Motor Carrier Restructuring Process, not printed, June 25, 1981
Ex Parte No. MC-98 (Sub-No. 1)	Investigation of Motor Carrier Classification System
Ex Parte No. MC-98 (Sub-No. 2)*	Procedural Rulemaking on Released Rates in Conjunction with Small Shipments, not printed, June 25, 1981



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**TRUCK AND BUS COMPANIES (continued)**


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Ex Parte No. MC-122 (Sub-No. 1)*	Implementation of Intercompany Hauling Reform Legislation, not printed, 132 M.C.C. 469 (1980)
Ex Parte No. MC-122 (Sub-No. 2)	Lease of Equipment and Drivers to Private Carriers
Ex Parte No. MC-122 (Sub-No. 3)	Interpretation—Intercompany Hauling
Ex Parte No. MC-125	Fare Flexibility for the Bus Industry
Ex Parte No. MC-128	Revenue Need Standards in Motor Carrier Increase Proceedings
Ex Parte No. MC-129	Platform Study of Class I and II Motor Carriers of General Freight Subject to Accounting Instruction 27 (validity of new small shipments cost study)
Ex Parte No. MC-133	Petition for Rulemaking on Entry Flexibility for Regular Route Passenger Carriers
Ex Parte No. MC-137*	No Suspend Zone—Motor Common Carriers of Property, not printed, May 22, 1981
Ex Parte No. MC-141*	Policy Statement on Motor Carrier Pooling Applications 127 M.C.C. 746 (1981)
Ex Parte No. MC-142*	Elimination of Gateway Restrictions and Circuitous Route Limitations 132 M.C.C. 359 (1980)
Ex Parte No. MC-142 (Sub-No. 1)*	Removal of Restrictions From Authorities of Motor Carriers of Property, 132 M.C.C. 374 (1980)
Ex Parte No. MC-145	Cancellation of Motor Carrier Joint Rates and Through Rates
Ex Parte No. MC-152	Policy Statement Regarding Duplicate Operating Rights
Ex Parte No. MC-156	Applications for Motor Authority by Railroads

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**FREIGHT FORWARDERS**


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Ex Parte No. 261 (Sub-No. 1)*	Joint Rates and Through Routes—Freight Forwarders and NVOCC's by Water 365 I.C.C. 136 (1981)
Ex Parte No. 364 (Sub-No. 1)*	Freight Forwarder Contract Rates 364 I.C.C. 413 (1980)
Ex Parte No. 380*	Status of Rail Carriers Affiliated Shippers Agents and Status of Forwarder—Affiliated Consolidators 365 I.C.C. 32 (1981)

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**OTHER MODES**


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Ex Parte No. 143	Rules and Regulations Governing the Settlement of Rates and Charges of Common Carriers by Water
Ex Parte No. 170	Rules and Regulations Governing the Settlement of Rates and Charges of Common Carriers of Property by Express

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TABLE 3.—Listing of formal significant cases, September 30, 1981

RATES		
<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 73 and MC-1	Regulations for Payment of Rates and Charges	None
2. Ex Parte No. MC-98 (Sub-No. 1)	Investigation of Motor Carrier Classification System	None
3. Ex Parte No. MC-125	Fare Flexibility for the Bus Industry	None
4. Ex Parte No. MC-128 includes I&SM-29772 Gen. Increase, SMCRC, April 1978. Numerous other related increases are pending	Revenue Need Standards in Motor Carrier Increase Proceedings	None
5. Ex Parte No. MC-129	Platform Study for Class I and II Motor Carriers of General Freight Subject to Accounting Instruction 27 (validity of new small shipments cost study)	None
6. Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)	None
7. Ex Parte No. 261 (Sub-No. 1)	Joint Rates and Through Routes—Freight Forwarders and NVOCC's by Water	None
8. Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Recovery Procedures	4/28/83
9. Ex Parte No. 311 (Sub-No. 4)	Review of the Motor Carrier Fuel Surcharge Program	None
10. Ex Parte No. 311 (Sub-No. 5)	Fuel Surcharge Program; LTL Surcharge and New Surcharge for Household Goods Carriers	None
11. Ex Parte No. 320 (Sub-No. 2)	Market Dominance Determinations and Considerations of Product Competition	5/18/81 (for product competition)
12. Ex Parte No. 334 (Sub-No. 5)	Zone of Reasonableness for Car Hire Charges	
13. Ex Parte No. 346 (Sub-No. 3)	Rail General Exemption Authority—Long and Short Haul Transportation	None
14. Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines—Nationwide	11/18/83
15. Ex Parte No. 354	Additional Charges of Motor Carriers and Freight Forwarders	None
16. Ex Parte No. 372	Notice to Shippers of Freight Refused or Unclaimed at Destinations	None

## RATES

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
17. Ex Parte No. 387	Railroad Transportation Contracts	None
18. Ex Parte No. 393	Standards for Railroad Revenue Adequacy	None
19. Ex Parte No. 399	Cost Recovery Percentage	None
20. Ex Parte No. 402	Reasonably Expected Costs	None
21. S5R2, S5R3, S5R6	Western, Eastern and Southern Rate Bureau Agreements	None
22. No. 37130 (Sub-No. 1)	Special Docket Proceedings—Waiver of Insignificant Amounts and Simplification of Procedures	None

## OPERATING RIGHTS

<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. MC-43 (Sub- No. 12)	Leasing Rules Modifications	None
2. Ex Parte No. MC-43 (Sub- No. 13)	Lease and Interchange of Vehicles (Rules Modifications) [49 CFR Part 1057]	None
3. Ex Parte No. MC-64 (Sub- No. 2A)	Special Temporary Authority Procedures	None
4. Ex Parte No. MC-65 (Sub- No. 6)	Petition to Expand Passenger Motor Carrier Superhighway and Deviation Rules	None
5. Ex Parte No. MC-67 (Sub- No. 6)	Elimination of Notification of ETA Applications	None
6. Ex Parte No. MC-67 (Sub- No. 8)	Rules Governing Temporary Authority and Emergency Temporary Authority	None
7. Ex Parte No. MC-73 (Sub- No. 1)	Interchange Policies at International Boundaries	None
8. Ex Parte No. MC-77 (Sub- No. 3)	Elimination of Certificates as a Measure of "Holding Out"	None
9. Ex Parte No. MC-95 (Sub- No. 3)	Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service	None
10. Ex Parte No. MC-122 (Sub- No. 2)	Lease of Equipment and Drivers to Private Carriers	None

TABLE 3.—Listing of formal significant cases, September 30, 1981—Continued

OPERATING RIGHTS		
<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
11. Ex Parte No. MC-122 (Sub-No. 3)	Interpretation—Intercompany Hauling	None
12. Ex Parte No. MC-133	Petition for Rulemaking on Entry Flexibility for Regular Route Passenger Carriers (Filed by Trailways)	None
13. Ex Parte No. MC-152	Duplicate Operating Rights	None
14. MC-C-10799	Transportation of Hazardous Wastes	None
15. Ex Parte No. 55 (Sub-No. 52)	Special Procedures Governing the Recovery of Expenses by Parties to Commission Adjudicatory Proceedings	None
FINANCE		
<i>Number</i>	<i>Title/Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 55 (Sub-No. 38)	Antitrust and Competition Factors in Motor Carrier Finance Cases	None
2. Ex Parte No. 55 (Sub-No. 53)	Motor Carrier Consolidation Procedures, General Policy Statement	None
3. Ex Parte No. 274 (Sub-No. 6)	Abandonment of Railroad Lines and Discontinuance of Service	None
4. Ex Parte No. 282 (Sub-No. 3)	Railroad Consolidation Procedures	None
5. Ex Parte No. 282 (Sub-No. 5)	Policy Concerning Traffic Protective Conditions in Railroad Consolidation Proceedings	None
6. Ex Parte No. 282 (Sub-No. 7)	Special Intermodal Authority	None
7. Ex Parte No. 392	Application Procedures for a Certificate to Construct, Acquire or Operate Railroad Lines	None
8. FD No. 29430 Sub-No. 1) et al	NWS Enterprises, Inc.,—Control—Norfolk and Western Railway Co. and Southern Railway Co.	8/02/83
9. FD No. 29601 FD No. 29664	Indiana Hi-Rail Corp.—Feeder Line Acquisition—ConRail Line between Beesons and Connersville, IN  Indiana & Ohio Railroad, Inc.—Feeder Line Acquisition—ConRail Line between Beesons and Connersville, IN	12/18/81
10. FD 30000, et al	Union Pacific Corp. and Union Pacific Railroad Co.—Control—Missouri Pacific Railroad Co.	4/12/82
11. AB-7 (Sub-No. 97)	Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Abandonment—Ortonville, MN, to Miles City, MT, and Discontinuance—Miles City, MT, to Billings, MT	9/15/81 Court imposed



TABLE 4.—Formal cases opened and closed during fiscal year 1980 as compared to prior fiscal years

	<i>Fiscal Year 1979</i>	<i>Fiscal Year 1980</i>	<i>Fiscal Year 1981</i>
Pending beginning of year . . . . .	11,237	18,135	12,917
Openings during year . . . . .	21,661	21,302	23,351
Closings during year . . . . .	14,763	26,520	31,594
Pending end of year . . . . .	18,135	12,917	4,674

TABLE 5.—Informal proceedings

	<i>Fiscal Year 1979</i>	<i>Fiscal Year 1980</i>	<i>Fiscal Year 1981</i>
Applications for motor temporary authority:*			
Filed . . . . .	13,924	16,240	14,053
Disposed of . . . . .	7,762	13,909	15,051
Pending at end of year . . . . .	7,962	1,824	732
Petitions in applications for motor carrier temporary authority:			
Filed . . . . .	444	1,474	974
Disposed of . . . . .	235	1,968	936
Pending at end of year . . . . .	309	117	155
Applications to deviate from regular routes:			
Filed . . . . .	166	141	18
Disposed of . . . . .	161	147	15
Pending at end of year . . . . .	18	21	3
Petitions in deviation filings:			
Filed . . . . .	8	3	0
Disposed of . . . . .	8	2	0
Pending at end of year . . . . .	1	1	0

\*Does not include emergency temporary authority figures since no data available on 1979 or 1980. In 1981, 12,161 ETAs were filed, 12,335 were disposed of, and 53 were pending.



TABLE 6.—Certificates issued for abandonment, construction, acquisition, and operation of rail lines

	Fiscal Year 1979		Fiscal Year 1980		Fiscal Year 1981	
	Appli- cations	Miles	Appli- cations	Miles	Appli- cations	Miles
I. Abandonment applications						
filed .....	13	4,419.24	130	4,784.56	161**	3,219.41
Certificate of abandonment:						
Granted .....	123	2,873.36	105	2,321.46	81	1,342.19
Denied .....	2	798.50	3	96.55	1	12.20
Dismissed .....	3	72.89	33*	5,259.27	11	24.60
Abandonment permitted since effective date of Act ..		76,574.9		78,896.4		80,238.59
II. Construction applications						
filed .....	1	56.08	3	19.74	13	94.6
Granted .....	0	—	7	.957	1	.82
Denied .....	0	—	1	.75	0	—
Dismissed .....	0	—	0	—	0	—
III. Acquisition and operation						
applications filed .....	11	271.78	3	46.22	26	497.85
Granted .....	14	565.54	2	10.84	11	8.46
Denied .....	0	—	0	—	0	—
Dismissed .....	3	222.29	0	—	2	50.53

\*5 of the 11 abandonments (5122 miles) in this category were filed by the Milwaukee Road. The Milwaukee Road Restructuring Act transferred from the Commission to the bankruptcy court final authority over the abandonment, sale and transfer of the lines of presently bankrupt railroads.

\*\*Including 41 Conrail filings. Under NERSA the Commission must grant any application filed by Conrail within 90 days unless an offer of financial assistance is filed.

TABLE 7.—Tariffs and schedules, fiscal year 1981

	<i>Received</i>	<i>Criticized</i>	<i>Rejected</i>
<b>Freight:</b>			
Common Carrier, Tariffs:			
Rail .....	54,762	183	1,206
Motor .....	467,373	2,307	3,938
Water .....	5,764	9	71
Pipeline .....	0	0	0
Freight Forwarder .....	7,444	51	71
International Ocean-Land Intermodal .....	69,728	0	200
<b>Total</b> .....	<b>605,071</b>	<b>2,550</b>	<b>5,486</b>
Contract Carrier, Schedules:			
Motor .....	44,816	401	745
Water .....	29	0	0
<b>Total</b> .....	<b>44,845</b>	<b>401</b>	<b>745</b>
<b>Total Freight</b> .....	<b>649,916</b>	<b>2,951</b>	<b>6,231</b>
<b>Passenger Tariffs:</b>			
Common Carrier			
Rail .....	37	0	0
Motor .....	4,112	25	26
Water .....	1	0	1
<b>Total</b> .....	<b>4,150</b>	<b>25</b>	<b>27</b>
Contract Carrier, Motor .....	3	0	0
<b>Express Tariffs:</b>			
Rail .....	0	0	0
Motor .....	0	0	0
<b>Total</b> .....	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Passenger &amp; Express</b> .....	<b>4,153</b>	<b>25</b>	<b>27</b>
<b>Grand Total</b> .....	<b>654,069</b>	<b>2,976</b>	<b>6,258</b>

## NOTES:

Also filed were 73,273 quotations under Section 10721 and 10722 of the Revised Interstate Commerce Act (formerly Section 22) for the transportation of property or passengers at reduced rates or fares.

Processed applications requesting permission to change rates or other tariff provisions on less-than-statutory notice, or to depart from the tariff publishing rules, numbered 8,357.

A total of 20,770 contracts and amendments between freight forwarders and motor common carriers were filed pursuant to Section 10766 (formerly Section 409) of the Act.

TABLE 8.—Long-and-short-haul applications (49 USC 10726)

Applications:		Applications:	
On hand beginning of year .....	10	Disposed of during year:	
Received during a year .....	84	Granted .....	83
		Denied .....	1
		Withdrawn .....	0
		Dismissed .....	0
<b>Total</b> .....	<b>94</b>	<b>Total</b> .....	<b>84</b>
		Pending at end of year .....	10

NOTE: Petitions for reconsideration of Board's action—0; applications processed against granting of relief—0; relief withheld pending hearings in applications—0.

TABLE 9.—Released rates board

	<i>Petitions for</i>	
	<i>Number</i>	<i>Admin. Review</i>
<b>FY 1981</b>		
Applications:		
On hand beginning of year .....	1	0
Received during the year .....	7	1
<b>Total</b> .....	<b>8</b>	<b>1</b>
Disposed of during the year:		
Granted .....	4	1
Denied .....	0	0
Closed .....	3	0
Withdrawn .....	0	0
<b>Total</b> .....	<b>7</b>	<b>1</b>
Pending at end of year .....	1	0

TABLE 10.—Action taken on proposals (protested and non-protested) considered for suspension and/or investigation

	Suspension Cases				Total No.	Percent
	Rail	Motor	Water	Frt. Fadr.		
Suspended in full .....	4	97	0	1	102	22.6
Suspended in part .....	0	2	0	0	2	0.4
*Not Suspended or Investigated ...	104	123	8	0	235	52.1
*Not Suspended but Investigated ..	14	2	1	0	17	3.8
*Otherwise disposed of .....	26	64	3	2	95	21.1
<b>Total:</b> .....	148	288	12	3	451	100.0

\*—Permitted to become effective

\*—Schedules cancelled or rejected; protests withdrawn or filed too late.

TABLE 11.—Informal rate case branch (Bureau of Traffic—FY 1981)

<b>Rate Cases General:</b>	
On hand beginning of year .....	157
Received during year .....	4048
Disposed of during year .....	4120
Pending at end of year .....	85
<b>Informal Complaints:</b>	
On hand beginning of year .....	156
Received during year .....	89
Disposed of during year .....	126
Pending at end of year .....	119
<b>Decisions—Statement of Claimed Damages (49 CFR 1107.95):</b>	
On hand beginning of year .....	2
Received during year .....	10
Disposed of during year .....	9
Pending at end of year .....	3
<b>Special Dockets Board:</b>	
On hand beginning of year .....	200
Received during the year .....	443
Disposed of during year .....	477
Pending at end of year .....	166

TABLE 12.—ICC unit of the National Defense Executive Reserve

NDER group	Fiscal year 1979	Fiscal year 1980	Fiscal year 1981
	On Roll	On Roll	On Roll
Rail .....	513	464	467
Motor .....	179	104	128
Water .....	151	32	33

TABLE 13.—Car Supply—Installed, Retired, and Ordered, Class I Railroads

	Fiscal Year			
	1966	1971	1976	1981
<b>Cars Installed:</b>				
Box .....	24,828	16,292	5,221	1,103
Refrigerators .....	9,790	5,233	704	0
Gondolas .....	6,616	5,906	4,036	3,776
Hoppers .....	17,875	15,789	22,337	6,627
Covered hoppers .....	11,154	7,911	2,982	9,824
Flats .....	5,055	1,958	2,028	524
Others .....	1,734	675	0	1,166
<b>Total Cars</b> .....	<b>77,052</b>	<b>53,764</b>	<b>37,308</b>	<b>23,020</b>
<b>Cars Retired:</b>				
Box .....	31,292	29,335	29,531	35,375
Refrigerators .....	2,896	7,028	778	3,399
Gondolas .....	12,688	10,725	8,182	12,374
Hoppers .....	22,311	17,406	19,976	16,506
Covered hoppers .....	881	1,605	2,759	6,594
Flats .....	509	1,438	2,897	5,444
Others .....	2,697	2,875	3,117	2,082
<b>Total Cars</b> .....	<b>73,274</b>	<b>67,536</b>	<b>65,684</b>	<b>81,774</b>
<b>Cars Ordered:</b>				
Box .....	27,784	9,272	7,348	282
Refrigerators .....	8,143	6,045	100	0
Gondolas .....	6,929	5,508	3,170	2,173
Hoppers .....	12,573	16,917	11,459	3,563
Covered hoppers .....	26,053	10,865	4,788	6,771
Flats .....	13,349	3,606	1,707	553
Others .....	13,557	6,815	4,920	1,075
<b>Total Cars</b> .....	<b>108,388</b>	<b>59,028</b>	<b>33,492</b>	<b>14,419</b>



TABLE 14.—Ownership, serviceable ownership, and turnaround time, Class I railroads

	<i>Fiscal Year</i>			
	1966	1971	1976	1981
<b>Ownership:</b>				
Plain Box .....	464,282	358,887	291,851	160,766
Equipped Box .....	117,418	171,592	169,847	159,428
<b>Total Box</b> .....	<b>581,700</b>	<b>530,479</b>	<b>461,598</b>	<b>320,194</b>
Refrigerators .....	102,297	98,707	85,433	59,553
Gondolas .....	211,819	185,537	172,008	143,111
Hoppers .....	426,230	390,398	346,474	307,926
Covered hoppers .....	97,402	134,883	156,421	173,183
Flats .....	63,942	75,444	97,079	91,747
Others .....	59,519	49,165	34,347	26,022
<b>Total Cars</b> .....	<b>1,542,909</b>	<b>1,464,613</b>	<b>1,353,460</b>	<b>1,121,736</b>
<b>Serviceable Cars:</b>				
Plain box .....	436,033	327,475	256,943	143,392
Equipped box .....	113,457	162,577	150,255	142,069
<b>Total Box</b> .....	<b>549,490</b>	<b>490,052</b>	<b>407,198</b>	<b>285,461</b>
Refrigerators .....	99,068	94,365	79,032	54,888
Gondolas .....	198,080	176,329	155,368	131,265
Hoppers .....	408,857	375,192	327,034	293,674
Covered hoppers .....	84,642	130,350	146,511	164,233
Flats .....	61,489	70,905	90,219	86,438
Others .....	56,732	46,853	32,224	24,756
<b>Total Cars</b> .....	<b>1,468,358</b>	<b>1,384,046</b>	<b>1,237,586</b>	<b>1,040,175</b>
	<i>Calendar Year</i>			
	1965	1970	1975	1980
<b>Turnaround Time—Days:</b>				
Box .....	19.4	22.4	30.0	34.2
Refrigerator .....	37.0	33.2	25.4	36.4
Gondolas .....	19.0	19.1	22.1	20.5
Hoppers .....	14.1	13.9	13.8	14.7
Covered hoppers .....	20.6	20.2	24.0	26.6
Flats .....	11.5	13.5	16.6	17.6
<b>Average All Cars</b> .....	<b>18.0</b>	<b>18.7</b>	<b>22.0</b>	<b>23.2</b>

TABLE 15.—Extensions of time limits—Rail proceedings, fiscal year 1981

<b>Proceeding</b>	<b>Type of Proceeding</b>	<b>Notification of Extension</b>	<b>Reason and Duration</b>
No. 36976 <i>Coal, Arkansas and Oklahoma to Bond, Ore, and Lone Star, Tex.</i>	Investigation	October 14 & November 12, 1980	Thirty and fifteen day extensions because of the complexity of issues.
No. 37409 <i>Aggregate Volume Rate on Coal, Acco, Utah to Moapa, Nevada</i>	Investigation	October 22, 1980	Three month extension due to the complex costing and important ratemaking issues.
No. 37435 <i>The Baltimore and Ohio Railroad Company v. The National Motor Freight Traffic Association</i>	Complaint	November 10, 1980	45 day extension required because, at the request of the parties, the Commission granted five extensions for the filing of evidence.
No. 37417 <i>Shipments in Marine Containers on Railroad Flat-cars, April 1980</i>	Investigation	November 17, 1980	Ninety day extension necessary to permit the parties an opportunity to file exceptions to a decision discontinuing the investigation.
No. 37420 <i>Iron and Steel Scrap, Illinois Rate Committee Territory</i>	Investigation	November 21, 1980	Thirty day extension required because of the complexity of the issues.
Ex Parte No. 375 (Sub-No. 1) <i>Increased Freight Rates and Charges—1980 Nationwide Phase II</i>	Investigation	January 16, 1981	Three month extension required because resolution of the issues depended in part upon the standards to be determined in another proceeding which was not completed prior to expiration of the suspension period here.
No. 37276 (Sub-No. 1) <i>Coal, Wyoming to Redfield Arkansas</i>	Investigation	February 3, 1981	Three month extension granted because of the complexity and importance of the issues and the extensive cost evidence presented.
No. 37076 <i>U.S. Department of Energy v. The Baltimore and Ohio Railroad Company</i>	Complaint	February 12, 1981	Ninety day extension required due to the complexity of the issues.
I&S 9205 <i>Trainload Rates On Radioactive Materials, Eastern Railroads</i>	Investigation	February 12, 1981	Ninety day extension required because of the complexity of the issues.
No. 37338F <i>South Carolina Public Service Authority v. Clinchfield Railroad Company</i>	Complaint	March 19, 1981	Ninety day extension necessary because of the complex cost calculations, the multiplicity of movements, and the mission of cost studies converting from the old to the new cost systems.

<b>Proceeding</b>	<b>Type of Proceeding</b>	<b>Notification of Extension</b>	<b>Reason and Duration</b>
No. 37522 <i>Florida East Coast Railway, Application of Joint Rates</i>	Investigation	March 23, 1981	Thirty day extension necessary because of the complex and controversial fact pattern.
No. 37507 <i>Rate on Iron Ore, Randville to Escanaba via Iron Mountain</i>	Investigation	April 9, 1981	Three month extension required because of the complexity of the issues.
No. 37285 <i>Greyhound Lines, Inc., v. National Railroad Passenger Corp.</i>	Complaint	May 22, 1981	Sixty day extension necessary because of the complexity of the issues.
No. 37619 <i>Iron Ore, Randville to Iron Mountain, MI, Escanaba &amp; Lake Superior</i>	Investigation	July 31, 1981	Three month extension necessary because of the complexity of the issues.
No. 37072 <i>Dana Corporation v. Atchison, Topeka &amp; Santa Fe Railroad</i>	Complaint	September 25, 1981	Forty-five day extension necessary because of the complexity of the issues.

TABLE 16.—Surcharges on joint rates filed under §10705a, and becoming effective during FY 1981, number and revenues generated

<b>Railroad Group and Type of Surcharge</b>	<b>No. of Surcharges</b>	<b>Revenue Accrued During FY 1981 Thous. \$</b>	<b>Annualized Revenue Thous. \$</b>
ConRail:			
Commodity .....	33	7,781	18,690
Light density line .....	37	1,062	4,914
<b>Total</b> .....	70	8,843	23,604
Class I carriers other than Conrail:			
Commodity .....	11	286	1,379
Light density line .....	5 <sup>a</sup>	465	1,561
<b>Total</b> .....	16	751	2,940
Class II carriers:			
Light density line .....	1	—	—
Class III carriers:			
Commodity .....	19	6	8
Light density line .....	8	3	15
<b>Total</b> .....	27	9	23
<b>Total</b> .....	114	9,603	26,567

<sup>a</sup> The count does not include an Illinois Central Gulf branch line surcharge postponed as a result of a Court order beyond Fiscal Year 1981 and covering points in Iowa, Minnesota, Mississippi, and South Dakota.

## APPENDIX C

### PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. Additionally, the Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. Price information may be obtained by writing to:

Superintendent of Documents  
Government Printing Office  
Washington, D.C. 20402  
Telephone: 202-783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Office of Communications (OC)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of Transportation Analysis (OTA)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Office of the Secretary (OS)  
Publications Room (Rm. 2229)  
Interstate Commerce Commission  
Washington, D.C. 20423
- Small Business Assistance Office (SBAO)  
Interstate Commerce Commission  
Washington, D.C. 20423

### COMMISSION DECISIONS

Individual copies of the Commission's decision may be obtained up to 30 days from the date of service from the Office of the Secretary, Publications Room, Room 2227, ICC, Washington, D.C. 20423, or by calling (toll-free) 800-424-5430 or 202-275-7279. Printed reports are also available from the Publications Room until the supply is exhausted.

The Secretary's Office makes available a daily recorded listing of significant Commission decisions. This information may be obtained by calling (toll-free) 800-424-5230 or 202-275-0895.

### CONSUMER PUBLICATIONS

#### *Household Goods Information—OCCA*

This booklet explains consumer rights when moving household goods across state lines. A "moving kit" has been compiled by the ICC which includes this publication and a public advisory on lost or damaged household goods. Summary information from performance reports filed with the ICC by the 20 largest moving companies and a summary of consumer complaints received by the Commission about those companies is also included in the "kit."

#### *Public Advisories*

#1 *Owner Operator—Rights, Responsibilities and Remedies—SBAO*

#4 *Lost or Damaged Household Goods—OCCA*

#8 *Lease—Purchase Plans—SBAO*

#### *Weekly Review—OC*

A comprehensive review of significant ICC actions of particular interest to the consumer. Copies can be obtained on a regular basis by writing the Office of Communications, ICC, Washington, D.C. 20423



## GENERAL PUBLICATIONS

### *Annual Reports of the Commission to Congress*

89th 1975 (026-000-01015-2) \*  
 90th 1976 (026-000-01041-1) \*  
 91st 1977 (026-000-01096-9) \*  
 92nd 1978 (026-000-01135-3) \*  
 93rd 1979 (026-000-01176-1) \*  
 94th 1980 (026-000-01195-7) \*  
 95th 1981 \*

### *Annual Reports of Companies*

These reports may be examined in the Bureau of Accounts' Public Room, Room 6124, from 8:30 a.m. to 5:00 p.m. weekdays. Photocopies of these reports, at a cost of 25 cents per page, with a \$2.50 minimum charge per order, can be obtained by writing the Office of the Secretary, ICC, Washington, D.C. 20423.

### *Can They Do That, Hot Or Exempt* OCCA

A listing of all commodities exempt from ICC regulation.

### *Code of Federal Regulations, Title 49,* *Revised to October 1981*

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures. (022-003-94228-9) \*

Parts 1200-1299: Uniform system of accounts destruction of reports, valuation. (022-033-94229-7) \*

Parts 1300-End: Passenger and freight tariffs and schedules, credit regulations. (022-033-94230-1) \*

### *Guide to Applying for Permanent Operating Authority—SBAO* February 1981

### *Illegal Lumping—OCCA*

Addresses illegal "lumper" practices

### *Information Bulletin 1—OCCA*

Requirements for transportation of passengers of property for-hire compensation in interstate and foreign commerce.

### *Information Bulletin 2—OCCA*

Requirements for engaging in motor carrier operations between points in a foreign country through the United States.

### *Interstate Commerce Act*

Public Law 95-473, Revised October 1978. Available from the Government Printing Office in Supplement 2 of the 1976 edition of the U.S. Code, 49 U.S.C. Sec. 10101 et. seq. \*

### *Interstate Commerce Acts, Annotated*

Volume 21, cumulated index, 1974 (026-000-00970-7) \*

Volume 22, cumulated index, 1977 (026-00-01073-0) \*

### *Library Bulletin*

Published six times a year, this bulletin provides a listing of the latest speeches by members of the Commission and a directory of legal and transportation articles which are available for review in the Library, Room 3392.

### *Loss and Damage Claims, Can You Collect?—OCCA*

### *Notice No. 1—OCCA*

Information on the positions of the ICC and the Federal Courts with respect to certain violations of the Interstate Commerce Act. The notice also has a list of exempt commodities.



**Self-Help Against Unauthorized Operations—OCCA**

**Speeches and Statements—OC**

ICC commissioners' speeches or statements before congressional committees may be obtained on an individual basis from the Office of Communications. You may also be placed on a mailing list to receive all speeches by writing Office of Communications, Room 1211, ICC, Washington, D.C. 20423.

**PERSONNEL**

**Career Opportunities with the ICC**

**Opportunity in the Legal Profession with the ICC**

These publications, and other information on working for the ICC, may be obtained by writing Office of Personnel, Room 1136, ICC, Washington, D.C.

**FINANCIAL PUBLICATIONS**

**A Study to Perform an In-Depth Analysis of Market Dominance and Its Relationship to Other Provisions of the 4-R Act—OTA**

**An Analysis of Rates and Costs in the Motor Carrier Industry—OTA**

April 1980

**An Evaluation of Charges that Regulatory Reform Will Degrade Small Community Motor Carrier Service—OTA**

March 1980

**Class I Line-Haul Railroads, Selected Earnings Data—OS**

Quarterly

**Cost of Transporting Freight, by Class I and II Motor Common Carriers of General Commodities, 1973**

Middle Atlantic Region, Southern (Intra) Region, East-South Territory, and South-Central Territory. Statement No. 2C16-73, April 1978. (026-000-01102-7)\*

**Cost of Transporting Freight by Class I and II Motor Common Carriers of General Commodity, 1974**

New England Region—Group I, New England Region—Group II, Central Region, Eastern Central Territory. Statement No. 2C17-74, February 1980 (026-00-01173-6)\*

**Consequences of Motor Carrier Deregulation on Fuel Efficiency—OTA**

Thomas Corsi, Asst. Prof., University of Maryland, Merrill Roberts, Prof., University of Maryland, September 28, 1979

**Early Experience with Airline Deregulation**

**Some Implications for Motor Carrier Regulatory Reform—OTA**

April 1980

**Empty/Loaded Truck Miles on Interstate Highways During 1976—OTA**

April 1977

**Exempt Rail Transportation of Fresh Fruits and Vegetables: Initial Impact—OTA**

**Financial and Economic Rate Analysis of the Motor Carrier Industry Volume II—R.L. Banks & Associates, Inc., October 2, 1979—OTA**

**Financial Management Information Package—OS**

Informs small businesses in surface transportation community, especially

new trucking firms, on ways to deal more effectively with the business aspects of the operations. 1981

*Freight Commodity Statistics Class I Railroads, Calendar 1977* (026-000-01094-2)

Final Publication \*

*Freight Commodity Statistics, Motor Carriers of Property* (026-000-01144-2) \*  
1977 Final Publication \*

*Highlights of Recent Activity in the Motor Carrier Industry*—OTA  
December 4, 1980, Section of Motor Policy

*The Independent Trucker A Nationwide Survey of Owner-Operators*—OTA  
1978

*Independent Trucker: Follow-Up Survey of Owner-Operators*—OTA November 1979

*Initial Paper: Regulatory Reform for the General Commodity Segment of the Motor Carrier Industry*—OTA January 1980

*Initial Report of the Motor Carrier Task Force*, May 1979—OTA

Report and recommendations of a staff task force on improving motor carrier regulation—OTA

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data of: OS

- Large Class I Motor Carriers of Property;
- Large Class I Motor Carriers of Passengers; and
- Large Class I Household Carriers

*Motor Carrier Computerized Costing Program*—OS

Computerization of the manual method used for determining motor carrier cost for individual freight movements, Statement No. 2-E-4-79.

*Motor Carrier Platform Study*—OS

Determination of the minutes per hundredweight in handling freight across a motor carrier platform. Statement No. 2S51-70, June 1973, Statement No. 2S1-79, July 1979

*The Prospect for Reorganizing the Milwaukee Road as a Viable Carrier*—OTA

*Rail Cost Update Ratios*—OS  
Quarterly

*Regressions for Railroad Cost Analysis*—OTA  
August 1977, ECMS-6

*Report of Railroad Employment Class I Line-Haul Railroads*—OS  
Statement No. M-350, Monthly

*Report of the Bus Industry Study Group Interstate Commerce Commission*, October 1979—OTA

*Selected Statistics of Class II Motor Carriers of Property*—OS  
Calendar 1978

*Selected Statistics of Class III Motor Carriers of Property*—OS  
Calendar 1978

*Transport Statistics in the U.S. Freight Forwarders*  
Calendar 1979 (026-000-01193-1) \*

*Transport Statistics in the U.S. Motor Carriers*

First Release, Part 2, 1979 (026-000-01196-5) \*

*Transport Statistics in the U.S. Private Car Lines*

Calendar 1978 (026-000-01164-7) \*

*Transport Statistics in the U.S. Railroads*

First Release, 1979 (026-000-01188-8) \*, Second Release, 1978 (026-000-01142-6).

*Wage Statistics of Class I Railroads in the U.S.—OS Statement No. A-300, Calendar 1979*

## APPENDIX D

### Appropriations and Employment

The following statement shows average full time employment and total appropriations for the Fiscal Years 1951 to 1982 for activities included under the current appropriation title "Salaries and Expenses."

Year	Appropriation	Average Employ- ment	Year	Appropriation	Average Employ- ment
1951 .....	11,408,200	2,072	1967 .....	27,169,000	1,929
1952 .....	11,264,035	1,890	1968 .....	23,846,000	1,899
1953 .....	11,003,500	1,849	1969 .....	24,664,000	1,808
1954 .....	11,284,000	1,838	1970 .....	27,742,660	1,802
1955 .....	11,679,655	1,859	1971 .....	28,442,000	1,731
1956 .....	12,896,000	1,902	1972 .....	30,640,000	1,676
1957 .....	14,879,696	2,090	1973 .....	33,720,000	1,765
1958 .....	17,412,375	2,238	1974 .....	40,681,000	1,874
1959 .....	18,747,800	2,268	1975 .....	44,970,000	1,986
1960 .....	19,650,000	2,344	1976 .....	52,455,000	2,034
1961 .....	21,451,500	2,386	TQ .....	12,290,000	2,113
1962 .....	22,075,000	2,400	1977 .....	60,786,000	2,084
1963 .....	23,502,800	2,413	1978 .....	65,575,000	2,047
1964 .....	24,670,000	2,408	1979 .....	70,400,000	2,040
1965 .....	26,715,000	2,339	1980 .....	79,063,000	1,946
1966 .....	27,540,000	2,376	1981 .....	82,400,000	1,852
			1982 .....	70,150,000	1,620

### Fiscal Year 1981 Appropriations

An Act (Public Law 96-400, approved October 9, 1980) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes including the following:

**Salaries and Expenses:** For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, \$82,400,000, provided: That joint board members and co-operating state commissioners may use Government transportation requests when traveling in connection with their official duties as such.

**Directed Rail Service:** None of the funds provided under this Act shall be available for the execution of programs, the obligations for which can reasonably be ex-

pected to be in excess of \$10,000,000 for directed rail service under 49 U.S.C. 11125.

### Supplemental Appropriation and Rescission

An Act (Public Law 97-12, approved June 5, 1981) allowing the transfer of \$2,500,000 from the Interstate Commerce Commission's "Salaries and Expenses" for "Payments for directed rail service."



### Status of Appropriations

Status of Fiscal year 1981 appropriations as of September 30, 1981:

Salaries and expenses:	
Total appropriation . . . .	\$82,400,000
Total obligations . . . . .	(75,430,000)
Transfer to Directed Rail Service (PL 97-12, Supplemental Appropriation and Rescission Act . . . . .)	(2,500,000)
Unobligated balance lapsing . . . . .	4,470,000
Directed Rail Service:	
Unobligated balance available from prior appropriation . . . . .	\$3,117,000
Transfer from Salaries and expenses (PL 97-12, Supplemental Appropriations and Rescission Act) . . . . .	2,500,000
Transfer from DOT (PL 96-254) Rock Island Railroad Transition and Employee Assistance Act . . . . .	3,012,000
Total Obligations . . . . .	(8,090,000)
Unobligated balance available . . . . .	\$539,000

### Receipts

Status of receipt accounts as of September 30, 1981:

Registration and filing fees	\$10,202,000
Fines, penalties & forfeitures . . . . .	503,000
Service charges for allotments of pay for savings account . . . . .	2,000
Charges for administrative services . . . . .	31,000
Recoveries from railroad loan guarantees . . . . .	9,273,000
Miscellaneous recoveries and refunds . . . . .	6,000
Total Receipts . . . . .	\$20,017,000



# APPENDIX E

## Carrier Financial and Statistical Data

TABLE 1.—Carriers reporting to the Commission

	<i>Number</i>
Carriers subject to Uniform Systems of Accounts and required to file annual and periodic reports as of September 30, 1981:	
Railroads, class I <sup>1</sup> .....	40
Railroads, class II <sup>2</sup> .....	28
Motor carriers, class I passenger <sup>3</sup> .....	67
Motor carriers, class I property <sup>4</sup> .....	1,031
Motor carriers, class II property <sup>5</sup> .....	2,293
Rate bureaus and organizations, class I .....	32
<b>TOTAL</b> .....	<b>3,491</b>
Carriers and organizations filing annual reports but not subject to prescribed Uniform Systems of Accounts as of September 30, 1981:	
Holding companies (rail) .....	4
Holding companies (motor) .....	57
Rate bureaus and organizations (less than \$100,000 gross revenue) .....	26
<b>TOTAL</b> .....	<b>87</b>
Carriers and organizations not subject to filing annual reports as of September 30, 1981:	
Railroad, class III .....	260
Railroad switching and terminal companies, class III .....	151
Railroad lessor companies .....	68
Stockyard companies .....	9
Carlines (companies which furnish cars for use on lines of railroads) .....	7
Classes II and III motor carriers of passengers .....	1,303
Classes I and II motor carriers of property relieved from reporting requirements of classes I or II .....	383
Class III motor carriers of property .....	18,563
Water carriers .....	266
Maritime carriers .....	6
Freight forwarders .....	244
Coal slurry pipeline company .....	1
Protective service companies .....	155
<b>TOTAL</b> .....	<b>21,416</b>
<b>GRAND TOTAL</b> .....	<b>24,994</b>

<sup>1</sup> Railroad companies having annual operating revenues of \$50,000,000 or more.

<sup>2</sup> Railroad companies having annual operating revenues less than \$50,000,000 but in excess of \$10,000,000.

<sup>3</sup> Motor carriers having annual operating revenues in excess of \$3,000,000.

<sup>4</sup> Motor carriers having annual operating revenues in excess of \$5,000,000.

<sup>5</sup> Motor carriers having annual operating revenues less than \$5,000,000 but in excess of \$1,000,000.

TABLE 2.—Recapitulation of preliminary 1980 operating revenues, net investment and taxes (dollars in thousands)

<i>Kind of carriers</i>	<i>Number of carriers represented<sup>1</sup></i>	<i>Operating revenues</i>	<i>Net investment</i>	<i>Income taxes on ordinary income<sup>2</sup></i>
Railroads—class I line haul . . . . .	39	\$28,102,946	\$33,702,966	\$502,678
Motor carriers of property—class I intercity . . . . .	835	30,338,283	6,862,267	407,065
Motor carriers of passengers—class I intercity . . . . .	48	1,397,378	517,600	25,111
<b>TOTAL</b> . . . . .	<b>922</b>	<b>59,838,607</b>	<b>41,082,833</b>	<b>934,854</b>
<b>Percentage distribution</b>				
Railroads—class I line haul . . . . .	4.2	47.0	82.0	53.8
Motor carriers of property—class I intercity . . . . .	90.6	50.7	16.7	43.5
Motor carriers of passengers—class I intercity . . . . .	5.2	2.3	1.3	2.7
<b>TOTAL</b> . . . . .	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<sup>1</sup> Carriers for which preliminary financial and statistical data were available.

for railroads, all other carriers include Federal and State income taxes, and provision for taxes.

<sup>2</sup> Federal income taxes and provisions for deferred taxes only

TABLE 3.—Class I line-haul railroads shareholders' equity, long term debt, and dividends (dollars in thousands)

<i>Item</i>	<i>1978</i>	<i>1979</i>	<i>1980</i>
1. Shareholders' equity:			
a. Capital stock . . . . .	\$4,324,266	\$4,452,980	\$4,431,729
b. Capital surplus . . . . .	4,273,524	5,377,850	6,891,779
c. Retained income . . . . .	8,019,759	8,400,494	8,536,446
d. Total equity . . . . .	16,617,549	18,231,324	19,859,954
2. Long-term debt . . . . .	12,025,457	12,454,142	13,229,171
3. Total equity and debt . . . . .	28,643,006	30,685,466	33,089,125
4. Ratio of debt to equity (percent) . . . . .	41.98	40.59	39.98
5. Amount of dividends: <sup>2</sup>			
a. Cash . . . . .	\$512,791	\$584,290	\$616,810
b. Stock . . . . .		0	0

<sup>1</sup> Preliminary.

<sup>2</sup> Includes figures for lessors and operating railroads without excluding duplications on account of intercorporate payments

for 1978. Figures for 1979 and 1980 are for Class I line-haul railroads only and includes duplications on account of intercorporate payments.

TABLE 4.—Class I line-haul railroads, condensed income statement, financial ratios, and employee data (dollars in thousands)

Item	1978	1979	1980 <sup>1</sup>
1. Number of carriers represented .....	40	39	39
<b>CONDENSED INCOME STATEMENT</b>			
2. Operating revenues:			
a. Freight .....	\$20,236,065	\$23,447,418	\$26,200,348
b. Passenger .....	355,592	381,827	438,400
c. Total operating revenues .....	21,721,332	25,219,115	28,102,946
3. Total operating expenses .....	21,043,143	23,994,154	26,249,920
4. Railway tax accruals .....	2,141,742	2,202,806	2,023,308
5. Net railway operating income .....	427,452	837,232	1,312,398
6. Ordinary income .....	306,786	938,254	1,191,384
7. Extraordinary items—Net <sup>2</sup> .....	-55,739	29,216	0
8. Net income .....	251,027	967,470	1,191,384
<b>NET INVESTMENT AND EQUITY</b>			
9. Net investment in transportation property and equipment plus working capital .....	29,418,800	30,962,208	33,702,966
10. Shareholders' equity .....	16,182,792	17,796,132	19,859,954
<b>FINANCIAL RATIOS (PERCENT)</b>			
11. Operating ratio (L. 3 + L. 2c) .....	96.88	95.14	93.41
12. Return on net investment (L. 5 + L. 9) .....	1.45	2.70	3.89
13. Return on equity:			
a. Ordinary income basis (L. 6 + L. 10) .....	1.90	5.27	6.00
b. Net income basis (L. 8 + L. 10) .....	1.55	5.44	6.00
<b>EMPLOYEE DATA</b>			
14. Average number .....	471,519	482,962	458,996
15. Compensation:			
a. Total .....	\$9,565,804	\$10,903,887	\$11,318,453
b. Per hour paid for .....	\$8.316	\$9.224	\$10.214

<sup>1</sup> Preliminary.<sup>2</sup> Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 5.—Class I line-haul railroads current assets and current liabilities as of Dec. 31, 1979 and 1980 (dollars in thousands)

	1979 amount	Percent of change	1980 amount	Percent of change
Total current assets .....	\$7,779,567	+13.2	\$8,676,400	+11.5
Cash and temporary cash investments .....	1,443,043	-7.9	1,761,324	+22.1
Materials and supplies .....	1,584,849	+25.7	1,766,267	+11.4
Total current liabilities .....	7,224,519	+15.2	7,778,963	+7.7
Net working capital:				
Including materials and supplies .....	555,048	-7.9	897,437	+61.7
Excluding materials and supplies .....	-1,029,801	-	-868,830	-
Ratios:				
Current assets to current liabilities:				
Including materials and supplies .....	1.08		1.12	
Excluding materials and supplies .....	.86		.89	
Cash and temporary cash investments to current liabilities .....	.20		.23	



TABLE 6.—Class I intercity motor carriers of property condensed income statement, financial ratios, and employee data (dollars in thousands)

Item	1978	1979	1980 <sup>1</sup>
1. Number of carriers represented .....	884	872	835
<b>CONDENSED INCOME STATEMENT</b>			
2. Operating revenues:			
a. Freight-intercity-common carrier .....	\$24,008,778	\$26,637,903	\$26,690,601
b. Freight-intercity-contract carrier .....	883,985	938,708	1,139,261
c. Freight-local cartage .....	293,196	337,111	340,034
d. Intercity transportation for other motor carriers ...	253,971	246,117	186,946
e. Other operating revenue .....	1,414,620	1,698,230	1,981,441
f. Total operating revenues .....	26,854,550	29,858,069	30,338,283
3. Operating expenses .....	25,491,049	28,788,467	29,012,030
4. Lease of distinct operating unit—net .....	-2,070	437	-558
5. Net carrier operating income .....	1,361,431	1,070,039	1,325,695
6. Other income and miscellaneous deductions from income—net .....	-142,132	-200,071	-277,036
7. Income taxes on ordinary income <sup>2</sup> .....	473,762	327,899	407,065
8. Ordinary income .....	745,537	542,069	641,594
9. Extraordinary items—net <sup>3</sup> .....	58,787	40,350	-588,265
10. Net income .....	804,324	582,419	53,329
<b>NET INVESTMENT AND EQUITY</b>			
11. Net investment in carrier operating property and equip- ment plus working capital .....	5,953,262	6,701,090	6,862,267
12. Shareholders' and proprietors' equity .....	4,883,175	4,971,073	4,606,807
<b>FINANCIAL RATIOS (PERCENT)</b>			
13. Operating ratio (L. 3 + L. 2f) .....	94.92	96.42	95.63
14. Return on net investment (L. 5 + L. 11) .....	22.87	15.97	19.32
15. Return on equity (L. 10 ÷ L. 12) .....	16.47	11.72	1.16
<b>EMPLOYEE DATA</b>			
16. Average number .....	557,118	554,811	471,458
17. Compensation .....	\$11,039,819	\$11,983,623	\$11,459,475

<sup>1</sup> Preliminary.

<sup>2</sup> Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code, also does not include income taxes on extraordinary items. Includes provision for deferred taxes.

<sup>3</sup> Includes income taxes on extraordinary items and discontinued operations and accounting changes. For 1980, approximately \$520 million loss is attributed to the write-off of interstate motor carrier operating rights made as a result of passage of The Motor Carrier Act of 1980.



TABLE 7.—Class I intercity motor carriers of passengers condensed income statement, financial ratios, and employee data (*dollars in thousands*)

Item	1978	1979	1980 <sup>1</sup>
1. Number of carriers represented .....	43	45	48
<b>CONDENSED INCOME STATEMENT</b>			
2. Operating revenues:			
a. Passenger intercity schedules .....	\$663,424	\$793,614	\$941,290
b. Local and suburban schedules .....	7,864	8,668	10,075
c. Charter or special service .....	153,170	179,890	199,704
d. Other operating revenues .....	196,586	218,070	246,309
e. Total operating revenues .....	1,021,044	1,200,242	1,397,378
3. Operating expenses .....	983,133	1,143,258	1,318,372
4. Lease of carrier property—net .....	40	114	177
5. Net carrier operating income .....	37,951	57,098	79,183
6. Other income and miscellaneous deductions—net .....	19,294	16,029	27,532
7. Income taxes on ordinary income <sup>2</sup> .....	16,044	16,056	25,111
8. Ordinary income .....	41,201	57,071	81,604
9. Extraordinary items—net <sup>3</sup> .....	0	0	7,457
10. Net income .....	41,201	57,071	89,061
<b>NET INVESTMENT AND EQUITY</b>			
11. Net investment in carrier operating property and equipment plus working capital .....	431,827	475,332	517,600
12. Shareholders' and proprietors' equity .....	499,462	572,752	615,759
<b>FINANCIAL RATIOS (PERCENT)</b>			
13. Operating ratio (L. 3 + L. 2e) .....	96.29	95.25	94.35
14. Return on net investment (L. 5 + L. 11) .....	8.79	12.01	15.30
15. Return on equity (L. 10 + L. 12) .....	8.25	9.96	14.46
<b>EMPLOYEE DATA</b>			
16. Average number .....	28,574	29,723	31,140
17. Compensation .....	\$463,769	\$527,588	\$598,537

<sup>1</sup> Preliminary.

<sup>2</sup> Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code, also

does not include income taxes on extraordinary items. Includes provision for deferred taxes.

<sup>3</sup> Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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